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Treaty-Making Power

Slavery and the Race Problem in the South

William H. Fleming

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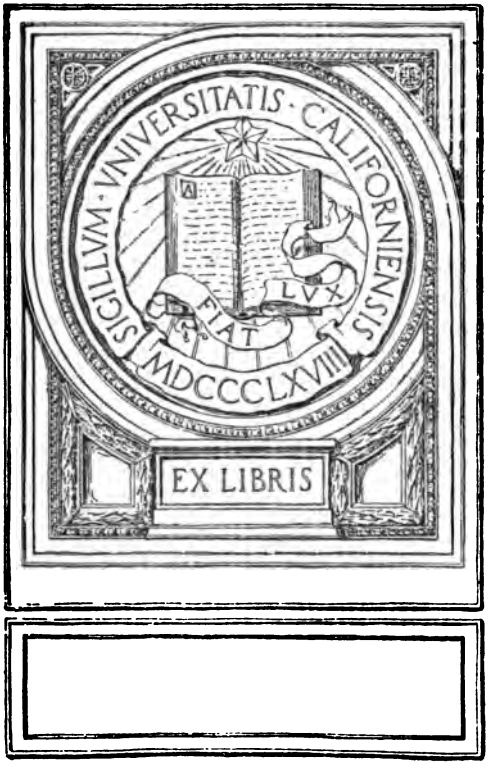
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Treaty-Making Power

Slavery and the Race Problem in the South

By

William H. Fleming

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UNIV. OF CALIFORNIA

ADDRESS OF WILLIAM H. FLEMING

BEFORE THE GEORGIA BAR ASSOCIATION AT WARM SPRINGS, GA., ON JUNE 3, 1909.

THE TREATY-MAKING POWER OF THE PRESIDENT AND SENATE: HOW AFFECTED BY THE POWERS DELEGATED TO CONGRESS, AND BY THE POWERS RESERVED TO THE STATES.

(From The Augusta Chronicle, Sunday, June 6, 1909.)

Following is the address of Hon. William H. Fleming, at Warm Springs, before the annual meeting of the Georgia Bar Association:

Mr. President and Gentlemen:

By the highest authority in the land we have been cordially assured that the South is now a fully restored member of the Union and is to be recognized and treated as such. That being true, there can be no impropriety in a Southern man before a Southern Bar Association discussing a national question.

The subject of our discussion is:

The Treaty-Making Power of the President and Senate; How Affected by the Powers Delegated to Congress, and by the Powers Reserved to the States.

The recent crisis which almost precipitated international estrangement between the United States and Japan, by reason of threatened legislation by the State

of California discriminating against Japanese children in the public schools, in contravention of their alleged rights under an existing treaty, imparts a living, practical interest to our discussion, which might otherwise stand exposed to the criticism of being merely academic.

A law connotes a sovereign and subjects; a treaty connotes two sovereigns. One is intra-national; the other is inter-national. Violation of a law involves disobedience, with the consequent penalties prescribed. Violation of a treaty involves breach of faith, with such consequent protest, retaliation, or war, as the aggrieved nation may be willing and able to make.

As between the nations themselves, the stipulations of a treaty rest in contract. But as between each nation and its own subjects, those stipulations have the status of positive law throughout its whole territory — unless that status be modified by the political structure of the government. Hence the pertinency of inquiring into our fundamental law on this subject.

Historical Development of Treaty-Provisions in Constitution.

When our Revolutionary fathers met in the Federal Convention of 1787 to frame our Constitution, there was, in the midst of great diversity of opinion on many other matters, entire unanimity on lodging the treaty-making power in some department of the na-

tional government to the complete exclusion of the states.

That proposition was unanimously agreed to as early as May 31st, the second business day after the Committee of the Whole began its work. It was affirmed in the regular convention without dissent on August 25th and reaffirmed without dissent on September 6th.

And when, after weeks and months of arguments, amendments, and re-amendments, the heterogeneous mass of political material had been combined into system and wrought into shape by the Committee of Detail, and the almost finished instrument came at last from the hands of the "Committee of Stile & Arrangement" (as Mr. Madison writes it) and received the final approval of the convention, it contained the following provisions on the subject of treaties:

No state shall "enter into any treaty, alliance or confederation." Art. 1, Sec. 10, Par. 1.

"He (the President) shall have power by and with the advice and consent of the Senate to make treaties, provided two-thirds of the senators present concur." Art. 2, Sec. 2, Par. 2.

"This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States shall be the supreme law of the land." Art. 6, Sec. 2.

Indeed the looser Articles of Confederation which became operative March 1, 1781, contain substan-

tially similar provisions against state action in the making of treaties.

But although there was such oneness of opinion in regard to vesting the treaty-making power in the Federal government as against the states—resulting from manifest political propriety and necessity — yet there was serious difference of opinion as to just what department of the Federal government should be intrusted with this high prerogative of sovereignty.

The draft of the Constitution as it came to the regular convention from the Committee of the Whole on August 6th lodged the treaty-making power exclusively in the Senate acting by majority vote, and there it remained until September 7th, ten days before adjournment, when the following substitute provision was adopted:

"The President by and with the advice and consent of the Senate shall have power to make treaties — but no treaty shall be made without the consent of two-thirds of the members present."

This verbiage was condensed and improved by the Committee on Style and Arrangement to read as it now stands:

"He shall have power by and with the advice and consent of the Senate to make treaties, provided two-thirds of the senators present concur."

The requirement of a two-thirds vote was doubtless based upon the same considerations of public policy and local jealousy which necessitated the provision in

the Articles of Confederation that the votes of nine states should be required to ratify a treaty.

Judging from the debates in the convention, the exclusion of the House from participation in treaty-making was not based on any principle of division of powers, but arose solely from the advantage of having a comparatively small body to deal with the class of subjects that often required secrecy for successful negotiation.

Had the fathers understood the mysteries of telepathy, and foreseen how easy it would be for the modern newspaper reporter to possess himself, by some subtle method of thought-transference, of all the secrets of executive sessions of the Senate, no doubt they would have attached less importance to the plea of necessity for excluding the more numerous branch of the legislature from these supposedly secret sessions.

In these secret executive sessions, the Vice-President retains the chair, thus establishing, as was supposed by some, a closer nexus between the President and the Senate.

In the convention on September 7th Elbridge Gerry opposed the provision making the Vice-President ex-officio president of the Senate. He contended that the close intimacy that must subsist between the President and the Vice-President makes it "absolutely improper." But on that issue, he was easily out-voted — the logic of his contention being more than met by the wit of Gouverneur Morris, who ob-

served, "The Vice-President then will be the first heir-apparent that ever loved his father."

Having thus briefly traced the historical setting of the constitutional provisions touching the treaty-making power, let us now inquire to what extent that power is affected by other powers delegated to Congress.

Treaty-Power as Affected by Powers Delegated to Congress.

It will be observed that the supreme law of the land is declared to be: First, the Constitution; second, the Statutes, and third, the Treaties. Whether or not there be any significance *inter sese* in this order of priority, of course the Constitution must, for other controlling reasons, outrank the treaties as well as the statutes. Valid treaties and valid statutes are each supreme in their own sphere, provided those spheres do not overlap. But suppose there be a conflict between a statute and a treaty, which must yield?

Only two departments of the government, the President and the Senate (by two-thirds vote), participate in the making of a treaty. Three departments, the House, the Senate and the President, participate in the making of a statute, except in case of a veto, when two-thirds of the House and Senate are required.

The House is necessary to every statute; the President is not. The President is necessary to every treaty; the House is not. This fact of the partici-

pation of the House, the great popular branch of the government, would of itself seem sufficient to give controlling effect to a statute as against a treaty.

In this connection, there is another consideration worthy of mention, based on our constitutional method of making laws and treaties. Two-thirds of the senators must concur to make a treaty. Therefore, assuming the same attendance in numbers and personnel at each vote, it follows that no bill in conflict with that treaty could pass the Senate and become a statute unless the opinions of some of the senators constituting that two-thirds should undergo a change.

The number of changes thus necessary to enact a subsequent statute in conflict with a prior treaty, would be such a number as would convert an affirmative two-thirds into a negative majority, that is a half plus one. Or, in other words, the number of changes would be one-sixth the entire vote plus one—this additional one vote being necessary because a statute must receive a majority vote, that is to say, at least one more than a half.

Assuming a full Senate of ninety-two members present, and the passage of a treaty by sixty-two ayes to thirty noes, then the passage of the conflicting statute by forty-seven ayes to forty-five noes would indicate a change of opinion by seventeen members away from the treaty.

We could scarcely assume that such a change could take place except for urgent public reasons, that

should properly be allowed to have their due weight under the Constitution.

Statute Prevails Over Treaty.

That a subsequent statute does prevail over a prior treaty has been uniformly held by our Supreme Court. Such was the ruling in 2 Pet. 253, 314. 112 U. S. 580. 124 U. S. 190. 130 U. S. 581. 149 U. S. 698. 175 U. S. 460.

The pith of the reasoning by which that conclusion was reached is well expressed in the following extract from the opinion delivered by Justice Field in 130 U. S. 600: "By the Constitution, laws made in pursuance thereof, and treaties made under the authority of the United States are both declared to be the supreme law of the land, and no paramount authority is given to one over the other. The treaty, it is true, is in its nature a contract between nations, and is often merely promissory in its character, requiring legislation to carry its stipulations into effect. Such legislation will be open to future repeal or amendment. If the treaty operates by its own force, and relates to a subject within the power of Congress, it would be deemed, in that particular, only the equivalent of a legislative act, to be repealed or modified at the pleasure of Congress."

The soundness of this doctrine seems never to have been questioned. But the opinion of the court contained another sentence immediately following those

above quoted, and in these words: "The last expression of the sovereign will must control."

Can a Treaty Annul a Statute?

If this be the correct construction of the Constitution, then not only can an act of Congress annul a prior treaty, but a treaty can annul a prior act of Congress.

This doctrine of a subsequent treaty taking precedence over a prior act of Congress, is stoutly combated by Judge Tucker in his great work on the Constitution, and he calls attention to the fact that the deliverance of the court last quoted was an *obiter dictum*. The issue raised by the record in that case was whether a subsequent act of Congress repealed a prior treaty, and that was decided in the affirmative. The *obiter dictum* consisted in the declaration that a subsequent treaty would repeal a prior act of Congress.

But on further investigation it appears that this same *obiter* was announced in 124 U. S. 190, in these plain words: "The one last in date will control."

Prior to that time, the court had said in 11 Wallace, 621, "A treaty may supersede a prior act of Congress."

And even as early as 1829, the court in 2 Pet. 315, said referring to a treaty: "Had such been its language, it would have acted directly on the subject, and would have repealed those acts of Congress which were repugnant to it."

Our dual system of state and Federal governments

has made us familiar with the principle of two separate political powers acting together, each supreme in its own sphere. But to hold that two such powers may have equal paramountcy in the same sphere involves some logical inconsistencies, and constitutes indeed a novel combination.

The spectacle of a see-saw between treaty and statute, each above the other, according to posterior date, could not be conducive to the stability of our laws, nor flattering to our national pride.

No case has yet been presented to the Supreme Court directly involving the issue of a repeal of a statute by a subsequent treaty, although the court has repeatedly committed itself by *obiter dicta* to the upholding of such a repeal.

The political departments of the government have wisely avoided making such an issue for the judiciary to decide. The identical question came before Congress in 1815 in connection with the treaty of Commerce and Navigation, which exempted British tonnage and goods imported in their bottoms, from the operation of an existing Federal statute laying additional duties on such tonnage and goods.

The treaty had been already proclaimed, but the Senate, anticipating some obstructive action by the House, passed a bill and sent it to the House for concurrence, declaring of no force or effect any act or acts contrary to the provisions of the treaty — thus showing that, in the opinion of the Senate, it was at least wise, if not essential, that a treaty conflicting

with a prior statute should itself be supported by a statute repealing that prior statute.

It is a significant fact that, in the debates on this bill in connection with the treaty of 1815, John C. Calhoun, then a member of the House, took the position that the treaty was all sufficient and needed no statute to support its repeal of the duties — though it is proper to add that he based his argument in part on the ground that a law had been passed during the previous session providing for a repeal of these duties, to take effect upon the repeal of similar duties by England, which mutual repeal he claimed had been effected by the treaty.

But the power of annulment by Congress is not the only means in reach of the House, to make its restraining influence felt in the matter of treaties. The provision of the Constitution that "no money shall be drawn from the treasury, but in consequence of appropriations to be made by law," enables the House by withholding appropriations to effectually paralyze the arm of the treaty-making power in all instances where money is necessary to carry it into effect. The same would be true of any treaty which involved the exercise of other powers to which the assent of the House is necessary.

Moral Obligations of House Toward Effectuating a Treaty.

Just how far the House is under a moral obligation to effectuate a treaty by concurring in appropria-

tions, or other necessary measures, is a question of ethics for the individual members of the House.

To hold this obligation imperative in all cases would be to deprive a member of the exercise of that discretion and judgment with which he is clothed as a representative of the people. To hold that he can indifferently recognize or renounce that obligation, would be to place too low a value on the national faith as pledged by the President and Senate. The tendency of the House to keep the national faith whenever pledged by the President and the Senate, will properly and necessarily increase as the power of international public opinion grows stronger, which it must surely do under the beneficent influence of the Hague Tribunal.

Whatever criticism might arise in the domain of international ethics against the action of the law-making department of our government in repealing, or in refusing to effectuate, a treaty, neither the motive nor the propriety nor the wisdom of that action could ever be called in question in the courts of our country. 130 U. S. 602.

But although Congress may annul a treaty, it can not destroy or impair transferable property rights that have already become vested under the treaty. 130 U. S. 609.

Treaty-Power as Affected by Powers Reserved to the States.

We come now to consider how far the treaty-making power is affected by the powers reserved to the states.

And here we find ourselves entering that twilight zone between state and Federal authority, where many of the ablest men of our country have followed divergent paths in search of more light.

In the first place, it is clear that no authority to make any sort of a treaty with a foreign power remains in the state. The states as such, have no foreign relations. There are forty-six flags at home, but only one flag abroad; the flag of the Union—"the broad ensign of the Republic, now known and honored throughout the earth, still full high advanced."

In the second place, let it be observed that in constitutional construction, the phrase, "the reserved rights of the states," has more particular reference to the enumerated division of powers between the states on the one hand, and the Federal government on the other.

When our dual system of state and national governments was being worked out in the convention of 1787, it was not from mere choice that powers delegated to Congress were enumerated; it was a matter of necessity from the nature of the dual system. It was not necessary to specify both the delegated and the reserved powers. But it was necessary to specify one or the other of these classes. It was practically impossible to enumerate the reserved powers, and hence the easier course was adopted of enumerating the delegated powers.

But as to treaty-making, there was no enumeration of powers suggestive of others reserved.

Moreover, the Tenth Amendment provides that "The powers not delegated to the United States by the Constitution, nor *prohibited by it to the states*, are reserved to the states respectively or to the people." And treaty-making is one of those powers dealt with in the Constitution expressly "prohibited by it to the states."

It will therefore be seen that the particular enumeration of powers delegated to Congress in the Constitution has reference only to intra-national and not to inter-national relations, and consequently can have no direct bearing on the subject of treaties, all of which deal necessarily with foreign relations.

It was through failure to observe this proper rule of construction, that the Supreme Court of California, in 1850, fell into the obvious error of holding that a treaty is supreme only when it is made "in relation to those subjects the jurisdiction over which has been exclusively intrusted to Congress." 1 Cal. 232.

The entire contractual power of treaty-making having been delegated, it follows that nothing that is legitimately the subject of a treaty remains within the exclusive power of a state. The treaty-making power of the President and the Senate being thus exclusive the vital question arises: what is its constitutional sphere of operation?

On broad principles of construction, it must be held that the treaty-making power being a creature of the Constitution, can not destroy its creator, nor substantially change the structure of the government, state or

national, as builded by the Constitution, nor violate any express inhibitions of the Constitution, nor pervert the purpose of its own creation by attempting to deal with subjects not properly within the range of treaty-making among nations.

The Supreme Court was made the protector of the Constitution, and it has not hesitated when occasion arose to invalidate acts of Congress that invaded the sphere of the reserved rights of the states. We have also seen that it has declared treaty provisions annulled or repealed by subsequent acts of Congress. But there seems to have been no case in our history, where a treaty has been declared void in the first instance by the court, on the ground that the treaty-making department had exceeded its powers by embracing a subject outside of its sphere. And yet, it would seem clear that such would be the duty of the court in a proper case made involving private rights.

Treaty-Power and Police Powers.

But the question that still urges itself is this: Are there any powers that a state can exercise in derogation of a treaty?

If so, they must be found in that undefined and almost undefinable region of jurisprudence, called, for lack of a better name, "Police Powers."

Congress possessing only delegated powers, with the accompanying right of adopting such means as are proper and necessary for their exercise, and no police powers having been delegated, it follows that

as against the states Congress can not act within this sphere of internal police, except when necessary to carry into operation some of its admitted powers — such, for instance, as that to regulate commerce between the states and foreign nations. Congress has no police powers as such, except in the District of Columbia and the territories, and over lands owned by the Federal government within a state.

Now the Supreme Court has time and again decided that while states can exercise their police powers as against Congress, they must do so in such a manner as not to impair the exercise by Congress of powers delegated to it.

Wherefore, inasmuch as a state must so use its police power as not to hamper Congress, the law-making power of the Federal government, in the exercise of functions committed to it, notwithstanding the express reservations as against Congress, the conclusion would seem to follow with even greater force that a like restriction must attach to a state in the use of its police powers as against the treaty-making power in the exercise of functions committed to it — because as to treaty-making, there were no express reservations to the states.

And thus we come back again to the same question in another form: What are the legitimate functions of the treaty-making power?

In 1843, the Supreme Court of New Hampshire declared: "The police power of the several states, regarded as separate governments, is not a subject

matter to which the treaty-making power extends." 13 New Hampshire, 576. And we have already seen that the Supreme Court of California limited the treaty-power to those subjects which had been intrusted to the exclusive jurisdiction of Congress.

But the Supreme Court of the United States, speaking through Justice Field, in 133 U. S. p. 266, says that the treaty-power extends "to all proper subjects of negotiation" between our government and the governments of other nations. After stating that a treaty can not do what the Constitution forbids, nor change the nature of the national government, nor of the state government, nor cede any portion of the territory of a state without its consent, Justice Field adds: "But with these exceptions, it is not perceived that there is any limit to the questions that can be adjusted touching any matter which is properly the subject of negotiation with a foreign country."

So far as the inheritance by aliens of property in a state is concerned, the Supreme Court has decided emphatically and repeatedly that a treaty is paramount to a state law. 3rd Dallas 199; 7th Cranch 627; 2nd Wheaton 259; 4th Wheaton 453; 9th Wheaton 488; 10th Wheaton 181; 100 U. S. 483; 133 U. S. 258.

In 1857 when William L. Marcy was Secretary of State, Attorney-General Caleb Cushing, in construing the British treaty of 1794, gave a written opinion in which he used the following language: "All impediments of alienage are absolutely levelled with the

ground, despite the laws of the state." Op. Atty.-General, Vol. 8, p. 417.

On the other hand, Judge Tucker questions the soundness of this conclusion as to treaty regulation of property-descent to aliens against state laws, and terms it "an extreme view of the treaty-power." Tucker's Const. U. S. 732.

But the long and unbroken line of decisions by the Supreme Court leaves no doubt that it is now established law in the United States that the treaty-making power can nullify state laws affecting the inheritance of property by aliens. Such construction is backed up by a century of historical recognition.

This established principle is big with logical consequences.

Because, since Congress can claim no right to regulate the descent of property in a state, we herein see: first, the treaty-making power doing things inside of a state which it is beyond the power of Congress to do; and, second, we see the annulment by the treaty-making power of a police law of a state. This latter conclusion must follow, unless it be contended that the regulation of the descent of property is not within the meaning of that comprehensive term "Police Powers." But this contention could scarcely be maintained in the face of the specific language of Justice McLean in 5th Howard 588, that the regulation of "the transmission of estates real and personal" is part of the state police, and the broader language of Chief Justice Taney in the same case, that the police powers "are

nothing more nor less than the powers of government inherent in every sovereignty * * * that is to say * * * the power to govern men and things." 5th Howard 582.

It being established that there are some police powers of a state which a treaty may directly nullify, it remains for us to ask: Are there any state police powers not subject to such nullification?

According to repeated adjudications, treaties can abolish all state discriminations against aliens in the matter of inheriting property; can they do the same in all other matters? — for instance, in the matter of marriage?

No case involving such an extreme test as this has yet been presented. But it would be very difficult in the face of past decisions to sustain the paramountcy of a state law on the mere plea that the regulation of marriage was a reserved police power.

So far as an invasion of the police power is concerned, every argument for the regulation of property inheritance would seem to apply to the regulation of marriage contracts. If any distinction at all can be drawn, it would have to be between property rights and personal rights.

The cases so far adjudicated refer to property rights, so that the issue as to personal rights may be considered as still open on the record.

Possibly a more hopeful defense against a treaty nullifying a state law on so domestic and personal a subject as marriage could be made along the line of

showing that the regulation of the marriage relation is distinctly beyond the range of those objects "usually regulated by treaty," to borrow the words of Mr. Jefferson.

However, we need apprehend no practical danger from this particular phase of our theoretical discussion.

Japanese Question in California.

Let us now apply the principles we have deduced to the concrete case of the recent Japanese question in California.

Several anti-Japanese bills were introduced in the state legislature. We will select the one most clearly within the recognized police powers, namely, the bill providing separate schools for the Japanese children, and prohibiting them from attending the regular schools for white children.

On March 21st, 1895, a treaty negotiated in 1894 between Japan and the United States was proclaimed to continue during a period of twelve years from July 17, 1899. This treaty is entitled, "A Treaty of Commerce and Navigation," and contains what is now the customary provision, known as the "Most Favored Nation Clause," according to which, the subjects of Japan are entitled to all of the privileges relating to trade and commerce, which may be granted to subjects of the most favored nation.

The administration at Washington took the position that the proposed law of California excluding

Japanese children from the schools — while admitting English, French, German and other white children — was a discrimination against Japanese children, and a violation of their rights under the treaty that went into effect in 1899.

Whether this commercial treaty actually embraced such a subject as school attendance, would seem to be open to some doubt. But that particular question does not come within the scope of our immediate inquiry. We will assume for the sake of the argument that the treaty does embrace school attendance.

It was only by the earnest appeal and vigorous action of the President and Secretary of State that the passage of this bill by the California legislature was prevented.

But suppose the bill had been enacted into law — which would have been paramount, the Federal treaty, or the state law?

The Supreme Court in 113 U. S. 31, decided specifically "that regulations to promote * * * education, etc." were embraced within the police power of a state. But we have also seen that the mere fact that a state law is within the police power is not of itself a protection against the treaty-making power.

To whatever extent, if at all, such a law can be said to interfere with property rights, it would, of course, be void against the treaty under decisions of the court already cited.

But aside from that view, the proposed state law was a premeditated indignity and insult to a proud

and militant nation. To allow educational privileges to the subjects of vanquished Russia, and deny those same privileges to subjects of victorious Japan, when both held the same treaty rights, would be an invidious distinction well calculated to arouse resentment or retaliation that might easily lead to war.

But there could be no war between Japan and California. The first step of an invading soldier on the soil of California would be the signal for national hostilities. The whole power of the nation must go to her defense because our Constitution solemnly guarantees that "The United States * * * shall protect each of them (the states) against invasion." Art. 4, Section 4.

Can one self-willed state be permitted to force the whole nation into war against its will, and for a cause too, which the nation may believe to be a breach of plighted national faith? To answer this question in the affirmative would be to seriously impeach not only the foresight, but the common sense of the statesmen who framed our Constitution.

If such an issue should ever be presented to the Supreme Court, we could scarcely doubt that the treaty would be sustained as against the state law.

Nor need the court experience any great difficulty in formulating an argument upholding such an opinion. For, it is the essence of the police power of a state that its effect is substantially intra-state or local. Now if the effect of the exercise of a police power extends beyond the state and materially inter-

feres with national foreign relations, the power so exercised ceases thereby and therein to be a mere police power, for the very reason that it operates substantially upon foreign relations, and therefore comes within the sphere of the treaty-making power.

And this would be true, regardless of the possible distinction heretofore suggested between property rights and personal rights.

Let this then stand as our formulated conclusion of the whole matter: *In a conflict between a Federal treaty and a state law if the foreign relations of the nation are substantially involved, the treaty must be paramount.*

In deciding the question whether foreign relations are substantially involved, it is manifest that no fixed rule can be laid down. Each case would have to stand or fall by its own facts. But this much we know, that the growing intimacy of the nations of the world, will necessarily result in extending the functions of treaty-making over a greater variety of subjects and details.

Just Rights of States Not Imperiled by Treaty-Power.

At first thought, the conclusion at which we have arrived in support of the treaty-making power might appear to be a just cause for grave concern to those of us who believe that the future welfare of our country depends largely upon preserving in its in-

tegrity our dual system of local and national governments.

But this fear is more fanciful than real. Treaties are matters of mutual contract between sovereigns. Neither party to a treaty would be willing to put aliens upon a higher plane of privilege than its own citizens in respect to any matter whatever. So that there is little probability of any personal rights that lie within the police powers of a state being unnecessarily sacrificed by a national treaty.

Moreover, a treaty can not be adopted by a mere numerical majority. It must receive a two-thirds vote of the Senate, where each state, however small, stands upon an equal footing with every other state, however large.

Again, we can take assurance from the record of the past century, during which the treaty-power has made no attempt to improperly or oppressively invade the police powers of the states. Nor has any treaty ever been negotiated, whose validity was enough in doubt to cause it to be directly attacked in the Supreme Court on the charge that it exceeded the jurisdiction of the treaty-making power.

Every sovereign has the right under international law to prescribe the conditions on which aliens may come into its territory or to exclude them altogether.

As a practical question, our fellow citizens of the Pacific states need have no fear that the President and two-thirds of the Senate will ever permit them to be exposed to any serious danger of being

over-run by an alien race. "Blood is thicker than water."

The diplomacy of the Federal government has already accomplished far more toward checking the immigration of Japanese laborers than could possibly have been accomplished by the California school bill.

No Surrender of Principle.

Nor is this conclusion that we have reached as to the authority of the treaty-making power to encroach upon the police powers of the states any latter-day surrender of any real principle of States Rights heretofore maintained.

The truth of this assertion can be historically supported by the expressed opinions of men illustrious in our political history.

It was Benjamin Franklin, who, in the Constitutional Convention of 1787, offered an amendment in the Committee of the Whole on May 31st which was unanimously agreed to, placing "treaties subsisting under the authority of the Union" in equal dignity with the articles of union themselves. It was eminently appropriate that this provision, so intimately connected with our foreign relations, should have been proposed by a man so experienced in diplomacy and so justly celebrated for sound practical sense and worldly wisdom as Mr. Franklin.

Edmund Randolph was one of the three members of the Convention of 1787 who were so much opposed

to certain other provisions of the Constitution that they refused to sign their names to the completed draft of the instrument. He was so jealous of the rights of the states as against the central government, that, in his opening speech of May 29th, he "disclaimed any intention to give indefinite powers to the national legislature, declaring that he was entirely opposed to such an inroad on the state jurisdictions, and that he did not think any considerations whatever could ever change his determination. His opinion was fixed on this point."

And yet, in this same speech when pointing out some of the defects in the Articles of Confederation, he said that the confederation "could not cause infractions of treaties or the law of nations to be punished" and that particular states might, by their conduct, *provoke war without control.*" And he pressed upon the convention the necessity of making provision in the Constitution to guard against such danger in the future.

Calhoun and the Treaty-Power.

John C. Calhoun possessed one of the greatest minds that ever labored in the field of American statesmanship. His intellectual bent was severely logical. Even when he was wrong, he was logically right — that is to say, any error of his conclusion would be found hidden in an unproven premise and not in his process of reasoning.

Facts and first principles were the only materials

he needed to build the most elaborate structure. His "Discourse on the Constitution and Government of the United States," an elaborate philosophical treatise, comprising nearly three hundred printed pages, is substantially without a quotation from any source except from the instrument he was analyzing, with occasional reference to the Federalist, a contemporary production. His mind seemed to scorn the aid of other minds in deducing the truth from any given state of facts.

This champion of the doctrine of nullification, the most extreme assertion of State Rights within the Union, agreed in substance with John Marshall upon that once mooted question whether it was within the power and duty of the Supreme Court to declare void a law that was in violation of the Constitution. He declared in his famous "South Carolina Exposition" of 1828 that such power rested upon an inference, but an "inference so clear that no express provision could render it more certain,"— though he also maintained that the decision was operative only between the parties to the case, and could not bind a sovereign state.

On this subject of the treaty-making power he was no less explicit in maintaining its constitutional supremacy.

On June 28, 1844, while Secretary of State under President Tyler, Mr. Calhoun addressed a letter to Mr. Wheaton, then American minister to Prussia, in

which he used the following language: "The treaty-making power has indeed been regarded to be so comprehensive as to embrace, with few exceptions, all questions that can possibly arise between us and other nations, and which can only be adjusted by their mutual consent, whether the subject matter be comprised among the delegated *or reserved powers.*"

Thus we have from the pen of this great defender of the rights of the states an explicit sanction to the doctrine that the treaty-making power may encroach upon the reserved rights and police powers of the states when our foreign relations are involved.

Again in his Discourse on the Constitution of the United States, composed toward the close of his life (1848-9), he elucidated, with keen and profound analysis, the principles involved in the treaty-making power, and after mentioning certain admitted restrictions, general and constitutional, he says: "Within these limits, all questions which may arise between us and other powers, *be the subject matter what it may,* fall within the limits of the treaty-making power and may be adjusted by it."

It would be most unfortunate for the cause of the preservation of our dual system of state and national governments, each supreme in its sphere, if any of its advocates should be so rash as to throw down a gage of battle upon the alleged rights of a state to over-ride a treaty, merely because it encroaches upon the police powers of the state.

We should join battle upon some issue holding out better hope of success.

Where the Danger of Centralization Lies.

It can be safely affirmed that the danger of centralization in the United States does not lie in the treaty-making power which deals with our foreign relations; but in the law-making and law-executing power of the Federal government, which deals directly with the relations of the national government and the states.

And let us not shut our eyes to the fact that this danger of centralization is increased by the insidious and growing tendency of some of the states themselves to shift upon the broad shoulders of the Federal government burdens — especially financial burdens — which should be borne by the states. This tendency doubtless springs in large measure from the difference in the methods of taxation generally adopted by the state and Federal governments—the one conducive to economy; the other productive of extravagance.

When we pay our taxes in most of the states, we know the one local collector and just how much we pay him. When the burden becomes too heavy, we rebel, and hold our state legislators responsible at the ballot box. But when we pay our Federal tariff taxes, we can not well figure out just how much we pay, nor do we know the collectors — except that all sellers of protected articles are to some extent Federal tax gatherers. Public money that comes easy goes easy.

Nothing would more conduce to the much needed economy of Federal administration than the supplementing of stationary low tariff revenues by the imposition of an income tax with a variable rate, rising and falling, according to the increasing or decreasing demands on the treasury. The taxpayers would then realize more acutely the benefits of an economical administration, and the states would understand better than now that, on the whole, they really save nothing to the people by drawing money from the Federal treasury rather than from the state treasury. From whichever source the money comes, the people pay it.

The Supreme Court and the Constitution.

In the event the treaty-making power should ever undertake to over-reach the admittedly wide limits of its constitutional prerogatives, and to use the name of "treaty" as mere colorable authority for usurpation, we could rely with strong faith on the Supreme Court to maintain the proper balance of our governmental system. That tribunal was made the defender of the Constitution and, in the natural order of things, it will be the last department of the government to yield to the pressure of the centralizing forces inherent in all democracies. Despite some grounds for adverse criticism, that court has made a notable record for fidelity to the Constitution.

In the face of political clamor, it was faithful to that charter in its opinion in the Dred Scott case—

which opinion, be it remembered, was never reversed except by the sword and the Thirteenth amendment.

In the midst of the turmoil, confusion and doubt as to what political changes the Civil War had wrought in our governmental structure, the Supreme Court in 1888 (7 Wall, 700) sounded this clear note of assurance:

"The preservation of the states and the maintenance of their governments are as much within the care of the Constitution as the preservation of the Union and the maintenance of the National government."

Before the passions engendered by Reconstruction had passed away, the court, still in the face of political criticism, upheld the claims of the states in the celebrated Civil Rights cases.

In declaring unconstitutional the first two sections of the Civil Rights Act of March 1, 1875, the Supreme Court in 1883, construing the Fourteenth amendment, said:

"It is state action of a particular character that is prohibited. Individual invasion of individual rights is not the subject matter of the amendment * * * * * It does not authorize Congress to create a Code of Municipal law for the regulation of private rights, but to provide modes of redress against the operation of state laws and the action of state officers executive or judicial when these are subversive of the fundamental rights specified in the amendment." 109 U. S. 11.

Again, in a recent decision (1907) in 206 U. S. 46, the court reiterates its position in the following unmistakable terms:

"The government of the United States is one of enumerated powers; it has no inherent powers of sovereignty; the enumeration of the powers granted is to be found in the Constitution of the United States and in that alone; the manifest purpose of the Tenth Amendment to the Constitution is to put beyond dispute the proposition that all powers not granted, are reserved to the people, and if in the changes of the years further powers ought to be possessed by Congress, they must be obtained by a new grant from the people."

Though our state Supreme Courts are clothed with a like power to declare void state laws when in violation of their written constitutions, yet it remains true that no other court in the world has as much power as the Supreme Court of the United States. Moreover, if our present form of government should ever be destroyed by forces working from within, no other government that could be erected on its ruins would ever give a court like power.

For this court by its own decisions to permit our constitutional government, of which it is the appointed guardian, to be overthrown would be to involve itself in the ruins. Dereliction to its high duty to protect the Constitution against all enemies would eventually mean abdication — nay more — it would mean self-destruction.

That exalted tribunal has every incentive of selfish interest and noble duty to stand faithful to its great trust.

Having outlived and discarded the doctrines of nullification and secession, We, the People of the United States, have created a unified national sentiment that will ever be a safe protection against that form of political disintegration, which threatened the Union for three-quarters of a century.

It now behooves us to be on guard against too much consolidation, involving, as it does, the gradual destruction of the vital principle of local government, with its accompanying virtues of individuality and sturdy self-reliance, and substituting in their stead the vices of depending for initiative and guidance on the Federal government, and too often begging help from the Federal treasury.

Having barely survived Scylla, let us carefully avoid Charybdis.

When I express my confidence in the wisdom of local government, of course, I do not mean local mobism.

Many noted thinkers and orators from the South have written and spoken of States Rights with varying limitations of the doctrine. But it remained for a full-blooded Puritan from New England to say something quite recently on this time-worn theme that was surpassingly beautiful. In his address before the New England Society at Charleston, S. C., in 1898, Senator Hoar, of Massachusetts, said that he

loved to think of the states as "beautiful personalities." That was a fine stroke of the artist's brush.

The fact is, that this old doctrine of States Rights is based on the soundest philosophy, when restricted within constitutional limitations and practiced along with the correlative doctrine of State Duties — I repeat it *State Duties.* It breathes the free spirit of Home Rule and individualism — and after all, is not the individual, whatever his environment, the safest unit on which to build a great nation?

It was the failure of Governor Aldgelt, of Illinois, to perform a *State Duty* that made it necessary and justifiable for President Cleveland to send Federal troops to Chicago to suppress mob rule that was obstructing United States mails.

Our people of all sections of the Union could set themselves to no wiser, nor more timely, task than guarding our dual system of government against every insidious danger that may threaten to transform it into a centralized, consolidated democracy—unwieldy in bulk, unchecked in power, ruled by the tyranny of a numerical majority, and becoming at last the unhappy victim of socialistic experimentation — not the socialism that springs from an altruistic Christianity, such as all true patriots might welcome; but the socialism that destroys the home and denies the right of private property, two of the most potent factors of civilization.

SLAVERY AND THE RACE PROBLEM IN THE SOUTH

"Remember that to change thy opinion, and to follow him who corrects thy error, is as consistent with freedom as it is to persist in thy error."

MARCUS AURELIUS.

"There is no ignorance more shameful than to admit as true that which one does not understand; and there is no advantage so great as that of being set free from error."

SOCRATES.

INTRODUCTION

A concise statement of the reasons which led to this publication in a permanent form may appropriately be in the nature of a Publisher's Announcement, and excerpts from correspondence relating to it will probably give the best idea of these reasons.

The correspondence regarding this speech began by a letter from the writer, of which the following is a copy:

"July 5th, 1906.

"HONORABLE WILLIAM H. FLEMING,

My Dear Mr. Fleming:—

I think that you and the whole country are to be congratulated upon your grand exposition of the principles which should guide the South, and indeed the whole country, in dealing with the problem of the negro race.

I have for several years spent my winters in Africa, and have studied the conditions of the African upon his own ground, having penetrated to the equatorial countries of the Uganda and the Congo State, in addition to traveling the whole extent of the Soudan, and while I agree with you in your statement that 'God knows the South wants no more of that curse,' of slavery, and while I agree with the general statement that 'slavery is the sum of all evils,' I have come to the conclusion that the greatest wrong which slavery inflicts upon a people is not upon the slave, but upon the *slaveholder*. No matter how greatly the slave is degraded, the evil effects to the superior race that holds the

slave is in my opinion the greater wrong of the two to the general civilization of the world.

To be, as you are, a leader in this movement, is in my opinion one of the highest honors to which any American can aspire. I deem your speech a real milestone in the path of progress, and with your consent, I should be glad to reprint it in an attractive form to extend its circulation as far as I can.

Yours sincerely,

DANA ESTES."

A prompt reply contained the consent to the publication, and in offering it to the public, the editor felt that the endorsement of the leaders of political and moral movements throughout the country would be of service in extending its influence. He, therefore, addressed President Roosevelt for this purpose, and the following are excerpts from the correspondence regarding this subject:

"July 23rd, 1906.

"TO THE PRESIDENT,

My Dear Sir:—

I think it beyond doubt that your attention has been attracted to the patriotic and important speech of the Honorable William H. Fleming of Georgia.

I have asked of him, as per enclosed copy of my letter to him of July 5th, the privilege of reprinting this in an attractive form to extend its benefits as widely as possible. It seems to me to mark an epoch in this agitation, and I am informed that since the delivery of this speech the Committee of the Georgia legislature has reported against the passage of the disfranchisement bill without a dissenting vote.

I believe this to be largely the result of Mr. Fleming's great speech.

If it would be entirely proper for you, in view of your exalted official position, to commend the sentiments of this speech, and permit such commendation to be used in an introduction to the speech, I should be pleased to receive the same from you.

The publication of the speech is not intended as a commercial transaction. * * * * *

Yours respectfully,

DANA ESTES."

"Oyster Bay, N. Y., July 25, 1906.

"My Dear Mr. Estes:

I am glad that you are to publish ex-Congressman Fleming's noteworthy speech in more permanent form than it is possible ordinarily to publish such speeches. * * * * *

Mr. Fleming's speech is admirable, alike for its fearlessness, its sanity, and the high purpose which it shows. The problems of any one part of our great common country should be held to be the problems of all our country—at least to the extent that all our people should give their hearty and respectful sympathy to those who in their own neighborhood, are trying to solve their particular problems aright. In each locality we have our own special and peculiar difficulties; and when a brave and honest man does good work in meeting the peculiar difficulties of his own region, he not only does good therein, but by example and influence he helps Americans in other parts of our great commonwealth manfully to grapple with the various evils which they in their turn, have to strive against.

Sincerely yours,

THEODORE ROOSEVELT."

At the writer's especial request, Mr. Fleming has furnished him with a few excerpts from the many letters of approval which he has received from all parts of the country; and especially from leaders of opinion in the South. In his reply he says: "Many of the strongest commendations which my speech has received have been given to me in person by word of mouth, and, consequently, do not appear in written form that could be used."

Among the many received by letters may be quoted the following:

(Hon. MOORFIELD STOREY, Boston, Mass., letter June 29th.)

"It is a courageous thing to stand up in one's country and speak as you have done, and such courage is very much needed today. You have never lacked that quality, and I hope your example will be an inspiration to others."

(Judge JOHN L. HOPKINS of Atlanta, Ga., letter July 28th.)

"I have read your speech more than once. It is satisfying. In some of its parts it has been comforting to me—in all, interesting. The preparation of such a paper is a valuable service to the state. It was needed—it was just the right thing."

(Judge JOEL BRANHAN of Rome, Ga., letter June 23rd.)

"I want to thank you for your grand speech on the disfranchisement of the negro before the Alumni of the University of Georgia on the 19th inst., which I have just had the pleasure of reading. It is truthful, honest and unanswerable."

(R. F. CAMPBELL, Asheville, N. C., letter June 25th.)

"In intellectual strength and moral soundness, it takes its place easily among the very best things ever written or spoken on this subject."

(Hon. HARRY HAMMOND, Beach Island, S. C., letter June 27th.)

"Van Holst, a northern sympathizer, said a century and a half must elapse before a verdict could be reached as to the wisdom of emancipation. The solution of the race problem advocated by you—Justice to the Negro—needs no time for its confirmation. It is registered among the indisputable truths of eternity itself."

(Former Congressman WM. H. FELTON, Cartersville, Ga.)

"I thank you with all my heart for the address made at the Athens Commencement. Yours were words of sober caution and profound prudential wisdom."

(EMORY SPEER, U. S. District Judge, letter June 27th.)

"I have received the pamphlet print of your great speech on Slavery and the Race Problem in the South. I had the happiness of hearing this appeal to the intelligence and sense of justice of our people, and I cannot well overstate the pleasure it gave me to see with what enthusiasm the Alumni body of our Alma Mater present received such a fearless and truthful exposition of great and salutary truths."

(JAMES R. RANDAL, New Orleans, Author of "Maryland, My Maryland," letter June 27th.)

"The speech was a masterpiece. No one else could have done it."

(Judge W. H. HULSEY, Atlanta, Ga., letter June 29th.)

"Reading your address from start to finish, it pleases me to say that every patriotic Georgian ought to feel grateful to you for giving to your state a clear, forceful and masterly presentation in your Athens address of what may be termed the Negro Problem."

(Congressman W. M. HOWARD, Atlanta, Ga., letter June 25th.)

"I am very glad to get the speech, not because it is a revelation to me of your views on this question, but especially to know precisely what you said in view of the criticism I have seen in the papers about it. The speech is up to the very best of your ability, and I am proud of you as a friend and a citizen of Georgia because of the pertinence and power of the speech. I am glad that you made it when and where you did. It is the strongest and clearest voice that has been heard since this issue became state wide."

(Prof. W. S. BEAN, Clinton, S. C., letter June 25th.)

"I am delighted with the address, its calmness and fairness of statement, its ample basis of fact, its appeal to a sense of justice and fairness and its belief in the principle that no wrong can be inflicted for political purposes which will not certainly react upon the agent at sometime. * * * * * I am glad you had such a splendid opportunity, such a fine, intelligent audience, and that you rose to the occasion in a speech that is masterly, statesmanlike and Christian. May you live long to keep up such a good work and find staunch friends to stand by you and your principles."

(C. P. GOODYEAR, Brunswick, Ga., letter June 27th.)

"That was a great and statesmanlike and patriotic speech of yours at the University. The day will come when wise men in Georgia,—good men everywhere,—will appreciate the calm temper and patriotic thought which dictated it."

(GEORGE FOSTER PEABODY, New York City, letter June 28th.)

"The more I think of the matter, the more do I believe that you have done a far-reaching service and that it may

well prove to be the case that no address during the last twenty years has been more important."

(Ex-Gov. ALLEN D. CANDLER, Atlanta, Ga., letter July 4th.)

"I have read it with a great deal of interest, and it is without exaggeration a gem, and every loyal Georgian who knows Georgia and her career in the past and the apparent insuperable obstacles her people have had to surmount will thank you for it. * * * I think no fitter occasion could have been found for the utterance of the lofty sentiments contained in it than the Commencement of the State University before the Alumni Association of the oldest state college in America."

(T. C. BETTERTON, Dalton, Ga., letter July 8th.)

"Please allow me to say that you have in this address performed the highest possible service to your state and to the South. I would that every citizen in our state could read it thoroughly."

(Rev. WALKER LEWIS, Augusta, Ga., letter July 15th.)

"I have just finished the best Sunday reading I have seen in many years. It is your great article on the Race Question. It is masterful, it is unanswerable, it is worthy of a great statesman; it is Christian philosophy and righteousness."

(FRANCIS LYNDE STETSON, Sterlington, Rockland Co., N. Y., letter July 8th.)

"I consider it the best presentation of the various phases of this difficult question that I have ever seen, and his proposed solution through the ordinary observation of the universal mandate of the moral law attests his sanity."

"Lake George, N. Y., 3rd July, 1906.

"THE HONORABLE WILLIAM H. FLEMING, Augusta, Ga.

My Dear Sir:—

I cannot forbear writing to you of my delight at your great speech, delivered before the Alumni Society at the University of Georgia. In its insight, its iron logic, its political perspective, and its high morality, it is, I think, one of the greatest constructive addresses of the time; and these qualities mark it as belonging to that class of political literature to which the speeches of Webster, Hayne and Lincoln belong. I would not be guilty of flattery, but such an address at such a time and place is an event which gives one a legitimate pride in human kind, and a joy in the mere fact of living. I have long felt that this time with its problems, on the principle that great occasions make great men, is one which must call into being and action men of the first order, men who are capable of seeing the significance of the time and of meeting its great demands. I think the men are coming, and I hail your speech as a sign that they are coming.

Faithfully yours,

SAMUEL H. BISHOP."

(Prof. CHAS. ELIOT NORTON, Cambridge, Mass., letter Aug. 11th.)

"Nothing could be better than its spirit. It would be a most encouraging sign in these confused days should your appeal to the intelligent and moral sympathy of the community be heeded and responded to."

(RICHARD C. OGDEN, Madison Ave., New York, letter Aug. 12th.)

"I appreciate your great contribution to the solution of the one great question that retards the growth of American unity."

(H. B. BROWN, Ex-Justice Sup. Court, U. S., letter Aug. 5th.)

"I cannot refrain from expressing to you my appreciation of your masterly address of June 19th upon Slavery and the Race Problem. It is quite the most satisfactory of any I have seen upon that subject. I cannot doubt your views will ultimately prevail in the South, as they do already in the North. I have always believed the question of suffrage would finally be solved by the adoption of an educational or property qualification, which, if fairly administered, would answer the purpose. I do not think anyone should be disfranchised solely on account of color."

The writer has made no attempt to collect the opinions of the Press, though he has seen many that were as emphatic in commendation as are the personal opinions herewith submitted. He can not, however, refrain from a brief excerpt from an editorial of the "Augusta (Ga.) Chronicle":

"The speech was pronounced by all who heard it or read it to be the greatest ever delivered from the University platform."

It may not be inappropriately stated that commercial considerations have had no part in influencing the publication of this speech, that the profits arising from its publication will be devoted to educational work in the South, and that the editor, and not the author, is responsible for the insertion of the quotations at the beginning of this work.

DANA ESTES.

(BOOKER T. WASHINGTON, Tuskegee, Ala., letter June 30th, 1906.)

"I read that speech with a great deal of interest and encouragement; and in behalf of my race, let me thank you for the brave and helpful words in its behalf."

"Three Oaks, Hickman Street, Augusta,
March 21, 1917.

"Dear Sir:—

I read your great oration yesterday from beginning to end, and I could not express without seeming to exaggerate, my very profound gratitude to you for it. You have said with beautiful clearness and admirable courage the things that needed to be said, and most of all said by a Southern man, and I feel that our nation, our civilization, owes you a debt which we can not too eagerly unite in trying to repay.

I congratulate you from my heart.

Yours sincerely,

(Signed) W. D. HOWELLS.

Hon. Wm. H. Fleming."

SLAVERY AND THE RACE PROBLEM IN THE SOUTH.

Brothers of the Alumni Society, Ladies and Gentlemen:

It is my purpose to discuss slavery and the race problem in the South, with special reference to our own State of Georgia.

No public issue is more deserving of thoughtful consideration by our people, and no occasion could be more fit for its discussion. This audience is qualified in head and heart to appreciate at its true value every argument that may be advanced, and this platform at our chief seat of learning is so lifted up, that words spoken here may be heard in all parts of the State, echoing among the "Hills of Habersham" and over the "Sea Marshes of Glynn."

If there be any one present perturbed by a secret doubt as to the propriety of my bringing this subject and this occasion together in the midst of the pending political campaign in Georgia, let me hasten to allay his fears with the assurance that I shall carefully refrain from all offensive personal allusions. Speaking to this very point some weeks before his fatal illness, Chancellor Hill cordially approved of my selection of the race problem for discussion at this time before the alumni of the university, and he added with char-

acteristic broadmindedness: "I wish my platform at Athens to be a place for the freest expression of honest thought."

At the outset, we should realize that if we are to make any genuine progress toward a right solution of our problem, we must approach it in a spirit of the utmost candor, and with an eye single to the ascertainment of the truth. The pessimist "sailing the Vesuvian Bay" listens for the dreaded rumblings of the distant mountain—blind to the wondrous beauties of earth and sky about him. The optimist floating down the placid upper stream pictures to himself an endless panorama of peaceful landscapes—deaf to the thundering cataract of Niagara just below him. But better than pessimism and better than optimism is that philosophy which faces facts as they are, and courageously interprets their meaning.

Slavery and Christianity.

In the earlier civilizations slavery was the rule, not the exception. But with the advent of the Christ and His teachings, a silent, gentle, yet all-compelling force began its work on the universal heart of humanity. Christianity adjusted itself to existing governmental institutions, including slavery. But it inculcated such lofty doctrines of love and duty, and created such vivid conceptions of a personal God and Father of us all, that it was only a question of time when Christian peoples could not hold in slavery those of their own faith and blood.

In England in 1696 the doctrine had obtained wide acceptance that Christian baptism of itself worked a legal manumission of the slave. Argument to that effect was urged by able lawyers in the court of King's Bench in the suit of Chamberlain *v.* Herney, but the case went off on another ground, and that point was not decided. About the same time, however, the colonies of Maryland, Virginia and South Carolina passed laws that Christian baptism should not free the negro slave, "any opinion or matter to the contrary notwithstanding." Thus we see a recognition of the necessity at that period of our history of controlling by statutory enactments this expanding sentiment of Christian brotherhood among the masses of the people, so as to prevent it from embracing the alien negro race.

The march of Christian civilization had put an end to white slavery, but negro slavery still flourished, chiefly because the negro was of a different race-blood from his masters. Oneness in faith and blood had grown to mean freedom for the white man. But oneness in faith, without oneness in blood, still meant slavery for the negro.

Indeed, negro slavery as a historical institution in Western civilization occupies a unique position of its own. It began in the fifteenth century when white slavery had practically ceased. Most other slaveries were incidental results of wars. Negro slavery originated in commerce, in trade and barter, and so continued until it was suppressed.

Justification of Negro Slavery Based on Race-Inferiority.

When in later years the institution was summoned before the bar of the world's public opinion, its most logical and profound defenders admitted the wrongfulness of white slavery, but justified negro slavery on the plea of the natural inferiority of the negro race.

Alexander Stephens, then vice-president of the Southern Confederacy, in his famous Corner-Stone Speech at Savannah in March, 1861, said: "Many governments have been founded upon the principle of subordination and serfdom of certain classes of the same race. Such were, and are, in violation of the laws of nature. Our system contains no such violation of nature's laws. With us, all the white race, however high or low, rich or poor, are equal in the eye of the law. Not so with the negro; subordination is his place." * * * * Referring to the Confederacy, he declared: "Its foundations are laid, its corner stone rests, upon the great truth that the negro is not equal to the white man, that slavery—subordination to the superior race—is his natural and normal condition."

The fact of race inequality here stated cannot well be denied. But there is still a fatal flaw in the logic. That flaw lies in the assumption that a superior race has the right to hold an inferior race in slavery. A race can not be justly deprived of liberty merely be-

cause it is relatively inferior to another. If so, all other branches of the human family could justly be reduced to slavery by the highest, most masterful branch—and that mastery could only be determined by force of arms. The obligation of the superior to lead and direct does not carry with it the right to enslave.

Mr. Stephens further declared in his speech: "It is upon this, as I have stated, our social fabric is firmly planted, and I can not permit myself to doubt the ultimate success of the full recognition of this principle throughout the civilized and enlightened world."

Here we have one of the ablest intellects of his day not only asserting that negro slavery was legally and morally right, but predicting that its recognition would become universal throughout the civilized world—a prediction made within five years of its abolition in the United States, and within twenty-seven years of its abolition in Brazil, which marked the final disappearance of human slavery as a legalized institution among civilized peoples.

Let me say in passing, that this Corner-Stone speech is not to be found in the authorized volume containing the biography and speeches of Mr. Stephens. One can scarcely suppress the question: Did the great commoner prefer for posterity to judge him by other speeches? Certain it is, that the views he expressed on negro slavery did not spring from hardness of heart, or want of sympathy with any suffering creature on earth. At his death, his negro

body servant in tearful accents pronounced upon him this noble eulogy: "Mars Alec was kinder to dogs than most men is to folks."

But Mr. Stephens was defending the then existing institution of slavery handed down to his people by their fathers, recognized by historical analogies from the Bible, and sanctioned by the Federal Constitution. His moral nature was uncompromising. There was no way to adjust that moral nature to existing conditions except by making the assumption, which he did make, of the right of a superior race to enslave an inferior race.

If race environment could so warp the judgment of a great intellect like that of Alexander Stephens, other men may well be cautious lest they miss the truth.

We need not stop to discuss whether the North or South was the more responsible for negro slavery in America. It takes two to make a bargain. Northern traders sold and Southern planters bought. If Charleston, South Carolina, was one of the chief ports of destination for slave trading vessels, Salem, Massachusetts, was one of the chief ports from whence those vessels sailed.

In the earlier days of the Southern colonies there were many strong protests against negro slavery. But once established it continued to grow and flourish until we reached those unhappy days foreshadowed by Mr. Madison, when he said in the constitutional convention of 1787 that the real antagonism would

not arise between the large States on the one hand and the small States on the other, as many seemed to fear, but that "The institution of slavery and its consequences formed the line of discrimination."

Slavery the Irritating Cause of the War.

No historian can ever truthfully assert that the men who bore the banner of the Confederacy in victory and in defeat with such matchless courage and heroic sacrifice were moved only by the selfish purpose of holding their black fellowmen in bondage. They were inspired by the noblest sentiments of patriotism. So far from being traitors to the Constitution of their fathers, which Mr. Gladstone declared was the "most wonderful work ever struck off at a given time by the brain and purpose of man," they reverenced that great instrument next to the Bible. So far from trampling it under foot, they held it up as their shield. They appealed to the North and West to recognize the binding obligation of that Constitution, as interpreted by the highest court, only to hear it denounced at last as "a covenant with death and an agreement with hell."

And yet, we must in candor admit that the truthful historian will write it down that slavery was the particular irritating cause that forced on the conflict of arms between the sections, though deeper causes lay at the foundation of our sectional differences on centralization and State rights.

When Robert Toombs made his memorable fare-

well speech in the United States Senate on January 7, 1861, he laid down five propositions, setting forth the contentions of the South, which, if granted, would have averted disunion. Every one of those five propositions was a clear cut, logical deduction from the original meaning and intent of the Constitution, and all five of them centred around the institution of slavery.

Again, when the conflict was over and the Constitution was amended at three separate times, two of these amendments, the thirteenth and fifteenth, referred exclusively to slavery, and the other, the fourteenth, referred chiefly to slavery. No other historical facts, though there are many, need to be cited to prove that slavery was the immediate precipitating cause of the Civil War.

The Thirteenth Amendment.

The thirteenth amendment, ratified in 1865, abolishing slavery, was a legitimate and necessary result of the arbitrament of the sword. Mr. Lincoln at first declared that the purpose of the war, on the part of the government, was to preserve the Union and not to free the slaves. But the progress of events had rendered him powerless to confine the struggling forces of social upheaval within that limitation—even if his personal views had undergone no change.

Great was the relief to many thoughtful minds in the South when this fruitful cause of sectional contention had been removed. In an address delivered

from this platform in 1871, Benjamin H. Hill gave thanks in fervid metaphor that the "dusky Helen" had left the crumbling walls of Troy, and that Southern genius, once "bound like Prometheus" to the rock of slavery, had been loosed from its bonds.

The Fourteenth Amendment.

The fourteenth amendment, ratified in 1868, was a combination of judicial wisdom in the first section, of fruitless compromise in the second section, and of political proscription in the third section.

The first section of this amendment must now be regarded as one of the very best parts of the entire instrument. It gave for the first time an authoritative definition of United States citizenship, and forbade any state to abridge the privileges of such citizens or to deprive any person of life, liberty or property without due process of law, or to deny to any person within its jurisdiction the equal protection of the laws. We had lived nearly three-quarters of a century under a government that had no constitutional or statutory definition of its own citizenship, and with no sufficient jurisdiction in its courts to give adequate protection to the equal rights now attaching to that citizenship.

What constituted one a citizen of the United States had long been a subject of discussion in the public journals, in the executive departments and in the courts. The Supreme Court, in the Dred Scott case in 1857, decided that a person of African descent,

whether slave or free, was not, and could not be a citizen of a State or of the United States. That decision was, of course, superseded by the fourteenth amendment.

This first section was profound in its wisdom and far-reaching in its effect upon the rights of life, liberty and property, not only of blacks but of whites. That eminent Southern jurist, the Hon. Hannis Taylor, referring specially to this section, has well said: "From a purely scientific point of view the Constitution of the United States never reached its logical completion until after the adoption of the fourteenth amendment."

The omission from the original Constitution of a definition of United States citizenship and of a distinct provision against State encroachment on equal rights attaching thereto, carried with it a deep significance.

Few facts in our history point more unerringly to the conclusion that in the minds of the framers of that instrument, the paramount allegiance of the citizen was to his State, and not to the United States. It was this sense of duty which properly constrained Lee and other lovers of the Union to surrender their high commissions in the Federal army and cast their fortunes with their own seceding States. Happily, the future holds for us no possibility of the recurrence of that divided allegiance.

Historically, under the Constitution, the South was right, both as to slavery and secession, but the

simple truth is that public opinion on those two subjects had outgrown the Constitution.

No man contributed more to the development of public opinion against disunion than did Mr. Webster. When he made his great speech in 1830 in reply to Mr. Hayne, closing with that matchless tribute to the Union flag: "The broad ensign of the Republic, now known and honored throughout the world, still full high advanced"—he created and vitalized and electrified Union sentiment throughout the length and breadth of the land. That speech, more than the word or deed of any other one man, prepared the way for the coming of Lincoln, and made possible the vast armies of Grant. After all, should not Webster be given first place in the Hall of Fame dedicated to Saviors of the Union?

The Fifteenth Amendment.

The fifteenth amendment, ratified in 1872, prohibited the United States or any State, in prescribing suffrage qualifications, from discriminating against citizens of the United States on account of race, color or previous condition of servitude. It did not confer the ballot upon any one—it only prohibited discrimination on account of a specified difference. The right to vote is not a privilege or attribute of national citizenship under either the fourteenth or fifteenth amendment; but the right to be exempt from discrimination in voting on account of race is an at-

tribute of national citizenship under the fifteenth amendment.

This amendment was at the time of its adoption a doubtful and dangerous experiment—but once made, it is beyond recall.

It embodied a distinct addition to the principle set out in the second section of the fourteenth amendment, which latter impliedly permitted a State to deny the ballot to the negro if it were willing to suffer the penalty of a proportionate reduction of representation in the lower house of Congress.

So far as the negro is concerned, the second section of the fourteenth amendment was a political compromise against him, while the fifteenth amendment was a complete declaration of his equal suffrage rights.

A resolution for a fourteenth amendment, in almost the identical words finally used in this second section in 1868, had been up for discussion in the Senate as early as 1866. Charles Sumner then denounced it as "a compromise of human rights, the most immoral, indecent and utterly shameful of any in our history."

Mr. Blaine, in his book, "Twenty Years in Congress," took the position that the enactment of the fifteenth amendment operated as a practical repeal of the second section of the fourteenth amendment. He says: "Before the adoption of the fifteenth amendment, if a State should exclude the negro from suffrage the next step would be for Con-

gress to exclude the negro from the basis of apportionment. After the adoption of the fifteenth amendment, if a State should exclude the negro from suffrage, the next step would be for the Supreme Court to declare the act was unconstitutional and therefore null and void."

Some latter-day statesmen, who have introduced bills in Congress to reduce Southern representation, do not seem to agree with Mr. Blaine.

Verily, if the party of Sumner should ever abandon the vindication of the fifteenth amendment by substituting for it the compromise of the fourteenth amendment, the shade of that eminent statesman would surely be moved to indignation and contempt—if it still concerns itself with mundane political affairs. Such a substitute-compromise now could bring no good to either whites or blacks of the South. It would work evil and evil only.

Some Reasons for Adopting the Fifteenth Amendment.

The fifteenth amendment was naturally received with much bitterness by the white people of the South, because many of them interpreted it to mean that our political enemies of the North, who held control of the government, intended thereby to doom the South to perpetual negro domination.

No doubt many of such advocates were moved by prejudice and hate, but we of the South, in this day, must not blind ourselves to the fact that this

amendment was advocated by some men then in public life who were not controlled by such base motives, but were patriotically striving to settle a great fundamental question of government on an enduring basis.

Let us not forget that when Congress passed the joint resolution submitting the fifteenth amendment to the States for adoption, the negroes had already been made citizens of the United States by the fourteenth amendment, and it was impossible to conjoin that status of citizenship with a total exclusion of the negro race from the ballot without undermining some of the foundation principles of our representative Republic.

Bear in mind, also, that at the time when Congress acted on that resolution in 1869, the negro had already exercised the right of suffrage under the reconstruction acts of Congress, beginning in 1867. It was not under the fifteenth amendment, but under the prior reconstruction acts, that the negroes cast their first ballots.

So that the issue then was, not whether to give the negroes something they had never possessed, but whether to deny them in the future a privilege they had already actually enjoyed.

The Southern States were expecting soon to be restored to political autonomy. What stand would the white people of those States take as to the rights of their former slaves? To what extremes of pillage and slaughter might not the millions of negroes go

under fear of partial or total re-enslavement? These and other questions were hard to answer. To whatever point of the political horizon the thoughtful patriot turned his gaze, the clouds were dark and portentous. A crisis was at hand. It had to be met.

Giving the ballot to five million of newly-freed slaves, of an inferior or backward race, ignorant, unaccustomed to do or think for themselves, could not have been the deliberate act of wise statesmanship, but only the choice of what seemed to be the lesser of two evils. In truth, the whole plan seems to have been an effort not only to obliterate at once, as with a stroke of the pen, all distinctions imposed by law, but to ignore all distinctions imposed by nature.

Many thoughtful men at the North are now of the opinion that it would have been far better had the military control in the South been continued and the ballot withheld for a time, at least, from the freed men, and finally bestowed upon them by degrees. But that is a dead issue now.

As a practical measure of procedure, the fifteenth amendment was in many respects harsh and cruel toward the white people of the South, but theoretically it was necessary to round out the Constitution of a representative Republic, based on that equality of citizenship before the law which had already been foreshadowed by the thirteenth and fourteenth amendments.

We may well thank God that the South has recovered from the immediate shock of these rough

post-bellum operations in political surgery. In comparison to the past—with its civil war and its reconstruction—the future can hold no terrors for us. Only let us act with wisdom and not lose what we have gained through our suffering.

Any Future Suffrage Amendment Will Increase Power of Congress.

The fifteenth amendment may, by negative acquiescence of the American people, become for a time a dead letter, but that three-fourths of the forty-five or more States will ever affirmatively repeal it for the purpose of allowing five or six Southern States to withhold from our negro citizens, as a race, the right to the ballot, is, to my mind, an hallucination too extreme for serious consideration.

If these post-bellum amendments of the Constitution bearing upon slavery shall ever be altered by future amendments, the alteration will be in the direction of placing under Federal control the entire subject of suffrage qualifications in all National and State elections. The unmistakable trend of our political and social development from the beginning of the government has been toward the centre, not away from it. The centripetal force has been stronger than the centrifugal force. Under a law of social gravitation all the parts have been drawn more intimately into one national unity.

To suppose that this national authority would of its own accord emasculate itself and surrender its

own present consolidated power back to the former diverse elements from which it was wrested, would be to reverse every record of political history, and to ignore every lesson of political philosophy.

Indeed, when the resolution for the fifteenth amendment was under discussion in the Senate in 1869, an amendment to that resolution was offered to confer upon Congress the full power to prescribe the qualifications for voters and officeholders, both in the States and in the United States.

It was not adopted then because the time was not ripe. But we may accept it to be as certain as any future movement of this kind can be, that if the Constitution shall be amended on the subject of the suffrage that amendment will not restore lost power to the States, but will confer more power on the National government. The less we agitate it the better.

Numerical Relation of Races.

We have now reached the stage in our discussion where we may best consider what is, to my mind, the most important factor in our problem, namely, the numerical relation of the whites and the blacks of the Southern States. Having the advantage in landholdings and all other forms of wealth, in intellect, in racial pride and strength, our white supremacy can never be overthrown except by force of numbers. For many years after the war we could not rid ourselves of the apprehension that at some day in the future we might be borne down by numerical ma-

jorities. These fears were not wholly unfounded at that time.

In slavery, under the fostering care, as well as the commercial interest of the master, the negroes multiplied in a greater ratio than the whites. What effect would the new social order of freedom have on that ratio of increase? Was the Caucasian race of the South face to face with a pitiless force that might gradually but inevitably overwhelm it by sheer weight of numbers? If so, would that race yield, or would it adopt extreme measures for self-preservation? These were momentous and perturbing questions.

The census of 1870, coming first after the war, could give very little basis for deduction of any sort. But when the census figures of 1880 were made known and were compared with those of 1870, that comparison revealed a most ominous situation. Three States, South Carolina, Mississippi and Louisiana, each had at that time an actual black majority, and the per cent of gain for the negroes in the Southern group of States, as shown by the statistical experts, was far in excess of that of the whites, being 34.3, as against 27.5 per cent from all sources.

Judge Tourgee's Prophecies Not Fulfilled.

Judge Albion W. Tourgee, in his book, "An Appeal to Cæsar," published in 1884, declared that in

the year 1900 every State between Maryland and Texas would have a black majority.

Time has exposed the falsity of that prediction. Not one of those States between Maryland and Texas that had a white majority in 1880 had lost it in 1900. On the contrary, every such State increased its white majority, while South Carolina, from 1890 to 1900, reduced her negro majority by 2,412, and Louisiana in the same period changed a negro majority of 798 into a white majority of 78,818.

The white majority in the ten distinctively Southern States was increased by 1,002,662 from 1890 to 1900. In the same period our white majority in Georgia rose from 119,542 to 146,481. In every Southern State, except Mississippi, where peculiar conditions prevailed, the margin of safety for white supremacy, even on the basis of numbers, has increased.

These predictions of negro majorities were not confined to writers of fiction, like Judge Tourgee. Professor Gilliam, a statistician of high repute, announced that among the whites of the old slave States the rate of natural increase from 1870 to 1880 was 20 per cent, while that of the blacks in the same States was 35 per cent.

With these figures as a basis he reached the conclusion that the 6,000,000 of Southern blacks in 1880 would increase to 12,000,000 in 1900. But when the census takers of 1900 had counted every colored man,

woman and child in the whole United States, the total footed up only 8,383,994, which is 3,616,006 less than the professor had predicted would be found in the Southern States alone.

Judge Tourgee, using these percentages, given by Professor Gilliam, argued that all the conditions pointed to a greater discrepancy in the future.

But the census of 1900 shows that the rate of increase of the blacks in the South Atlantic States, where the conditions are most favorable, was only 14.3 per cent from 1890 to 1900, instead of 35 per cent, as reported for a previous decade, while that of the whites stood substantially at its previous record of 20 per cent.

It is now an accepted fact that the census of 1870 did not give a complete enumeration of the negroes in the South, and this deficiency, by comparison with the more accurate census of 1880, necessarily showed a greater proportionate increase among the negroes than among the whites. It was this error in figures that led to all these unfounded predictions, which for a time hung like a pall over the South.

Margin of Safety for White Supremacy Steadily Increasing.

But the census figures of 1890 and 1900 supplied the necessary data for a correct comparison. The resulting demonstration was that instead of the whites of the South being overwhelmed with a deluge of

negroes, the certainty of continued white supremacy has steadily increased with every decade.*

One cause of this comparative decline of the negroes in numbers is to be found in the fact that they have no source of supply from immigration, while the whites are receiving constant accessions from other States and from foreign countries. This influx of whites, comparatively small at present, will undoubtedly continue and become larger with our growing industrial prosperity, which was never on so firm a foundation as now. The completion of the Panama canal will accelerate the development of our resources and give new impetus to white immigration, and thus help vastly in the solution of our problem.

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* This tendency to a growing majority of the whites over the negroes is strikingly supported by the census of 1910.

In the decade from 1900 to 1910 every State from Maryland to Texas that had a white majority in 1900 increased that majority; and the two States (South Carolina and Mississippi) that had negro majorities in 1900, had reduced these majorities in 1910.

In South Carolina, the excess of negroes over whites in 1900 was 224,702.

In 1910 that excess was 156,286 — showing a decrease of 68,416 in that decade.

In Mississippi the excess of negroes over whites in 1900 was 268,870. In 1910 that excess was 221,860 — showing a decrease of 47,010 in that decade.

Georgia's white majority of 146,257 in 1900 was raised to 255,147 in 1910 — an increase of 108,890.

In the ten States bordering the Atlantic and the Gulf from Maryland to Texas inclusive, the white majority in 1900 was 3,740,037.

In 1910 that majority had increased to 5,444,773 — showing an increase of 1,704,736 in that decade.

In the same group of States for the same decade the rate of increase of the negroes was slightly in excess of 10 per cent, while that of the whites was nearly 24 per cent.

The total numerical increase of the negroes for the decade in that group of States was 648,598; for the whites it was 2,453,333.

Maryland shows an actual decrease of negro population from 1900 to 1910 — the number being 3,371.

A second cause of this comparative decline is that the death rate among the negroes is abnormally high. In typical Southern cities, where the death rate among the whites stands at the moderate figures of 10 to 12 per thousand, it reaches among the negroes from 20 to 25 per thousand.

It has recently been asserted by some supposedly competent authorities that the death rate of the negroes is now probably in excess of their birth rate, so that an actual numerical decrease has set in, owing largely to the ravages of consumption and certain other diseases. Nature exacts obedience to her laws—she knows neither pity nor revenge.

Professor Wilcox of Cornell University and Professor Smith of Tulane University, and others, have undertaken a more far-reaching investigation into the census figures and the facts of ethnological history, and have deduced therefrom the conclusion that "the negroes will continue to be a steadily smaller proportion of our population," and that in the course of time they will die out in America from inherent and natural causes.

Whether these extreme speculations—for they are speculations—are well founded or not, yet the established facts as to the relative increase of the races have a most important bearing on the solution of our problem. They show that this problem is not near so difficult as it was supposed to be twenty years ago, when false prophets were predicting white submergence.

And more important still, these facts show that the white people of the South, and especially of the State of Georgia, can now proceed to work out their racial problem on lines of justice to the negro, without imperilling white supremacy. Those fears which once appalled us, we may now dismiss, and let reason resume its sway.

If future years should develop enough race pride in the negroes to make them concentrate in one locality, they might gain ascendency there and give the world a practical demonstration of their capacity or incapacity as a race-force in civilization. But we see no clear signs of such a movement now, and Georgia, at least, is in no danger of being chosen as the Canaan for that sort of an experiment.

A Working Plan of Justice.

In seeking a solution of any difficult problem, the first step should be to eliminate the impossible schemes proposed, and then concentrate on some line of operation that is at least possible. We often hear the epigrammatic dictum that there are but three possible solutions of our race problem: deportation, assimilation or annihilation. When we bring our sober senses to bear, all three of these so-called possibilities appear to be practical impossibilities. Not one of the three presents a working hypothesis. Physical facts, alone, prevent deportation. Physical facts, stressed by an ineradicable race pride, bar the way against assimilation. Physical facts, backed by

our religion, our civilization, our very selves, forbid annihilation. We can not imitate Herod.

This much seems clear, beyond doubt, that the whites are going to stay in this Southland for all time, and so are the negroes going to stay here in greater or less proportions for generations to come. If, then, both races are to remain together, the plainly sensible thing for statesmen of this day to do is to devise the best *modus vivendi,* or working plan, by which the greatest good can be accomplished for ourselves and our posterity. We of this day are not expected to overload ourselves with the burden of settling all the problems of all future ages. If we take good care of the next few centuries, we may well be content to leave some matters to be attended to by our remote posterity—aided, of course, by Providence.

Over against that Trinity of impossibilities—deportation, assimilation or annihilation—let us offer the simple plan of justice.

The first and absolutely essential factor in any working hypothesis at the South, so far as human ken can now foresee, is white supremacy—supremacy arising from present natural superiority, but based always on justice to the negro.

Those whose stock in trade is "hating the nigger" may easily gain some temporary advantage for themselves in our white primaries, where it requires no courage, either physical or moral, to strike those who have no power to strike back—not even with a paper ballot. But these men will achieve

nothing permanent for the good of the State or of the nation by stirring up race passion and prejudice. Injustice and persecution will not solve any of the problems of the ages. God did not so ordain His universe.

Justly proud of our race, we refuse to amalgamate with the negro. Nevertheless, the negro is a human being, under the Fatherhood of God, and consequently within the Brotherhood of Man—for those two relations are inseparably joined together. All soul-possessing creatures must be sons of God, and joint heirs of immortality.

Moreover, the negro is an American citizen, and is protected as such, by guarantees of the Constitution that are as irrepealable almost as the Bill of Rights itself. Nor, if such a thing as repealing these guarantees were possible, would it be wise for the South. Suppose we admit the oft re-iterated proposition that no two races so distinct as the Caucasian and the negro can live together on terms of perfect equality; yet it is equally true that without some access to the ballot, present or prospective, some participation in the government, no inferior race in an elective Republic could long protect itself against reduction to slavery in many of its substantial forms—and God knows the South wants no more of that curse.

We have long passed the crisis of the disease brought on by the existence of slavery in the blood of the Republic. Let us now build up the body politic in health and strength, and guard it against ever again being inoculated with a poison even remotely

resembling that deadly virus. Sporadic cases of peonage have already developed in several States and have been suppressed. Let us provide against every appearance of contagion.

Race Pride Versus Race Prejudice.

One of the most serious difficulties about the solution of our problem is to be found in getting the dominant whites of the South to draw a proper discrimination between a laudable pride in our race, and an unworthy prejudice against the negro race. Prejudice of any sort is hostile to that sound judgment which the Creator gave us for our guide. Race prejudice presents this disturbing element in one of its most unreasoning forms. In violence it ranks next to religious fanaticism. The one is based on a supposed duty to God; the other on a supposed duty to one's race-blood. The deeper this sense of duty, the more hardened the mind against every appeal to reason. In persecuting the early Christians, Paul thought he was doing his duty to God. The men who hanged the witches in New England thought they were doing their duty.

So, perhaps, may think that ex-preacher,* who in our own day has turned playwright, and calling to his aid all the accessories of the stage and all the realisms of the living drama, seeks to fan into flame the fiercest passions of the whites and blacks. His chief purpose, so far as one can logically deduce it, seems to be to force into immediate conflagration combus-

*Rev. Thomas Dixon.

tible materials, which his heated imagination tells him must burn sometime in the future. Apparently he chafes under the delay of Providence in bringing on the ghastly spectacle, and yearns to witness with his own eyes in the flesh that reign of hell on earth before his own redeemed soul is ushered into the calm, serene and gentle presence of Him whose gospel of love and light he once preached to erring men.

If the true purpose of this reverend gentleman be to preserve the blood of our race in its purity by creating a sentiment against intermarriage of the whites and blacks, let him confine his play to Chicago and Boston and New York and Philadelphia and other like places, where some few of such marriages are said to occur. As for us in the South, we need no artificial stimulant to arouse our people against that sort of racial intermarriage. Our law forbids it, and that is one law no man or woman ever violates.

Race Purity.

In this connection let us of the South realize the hard fact that the greatest obstacle to the preservation of the purity of the blood of our race, about which we hear so much in this day, was removed when slavery was abolished. That institution, as indisputable facts too plainly show, wrought much contamination of Caucasian blood.

In Virginia in 1630 a white man-servant was publicly flogged for consorting with a negro slave, and was required to make public confession of his

guilt on the following Sabbath—but clearly the custom of flogging for that offense must soon have fallen into "innocuous desuetude."

In calmly considering now the situation that confronted our statesmen of the ante-bellum period, that which most astounds us is their apparent failure to foresee what would have been the inevitable consequence of an indefinite continuance of slavery in its effect on race purity and on relative race numbers. The ratio of increase of the negroes was far in excess of the whites. The great laboring middle class, which forms the backbone of every nation's pluck and power, was fast migrating Westward, and the remaining population was rapidly crystallizing into an upper class of white slave holders and a lower class of negro slaves—the latter out-multiplying their masters in numbers. Another one hundred years of slavery would in all probability have doomed the South to absolute negro domination by mere weight of numbers whenever emancipation should come—and come it was sure to do at some time in the evolution of the elemental forces that were at work.

If there be a Providence who watches over the affairs of nations and "slumbers not nor sleeps," we may say in all reverence that he would have made an almost inexcusable blunder if he had delayed much longer the abolition of slavery.

Social recognition of the true dignity of labor, which is so necessary to the growth of a vigorous and

self-respecting middle class, could not be maintained in the presence of slavery where manual toil is so generally regarded as a badge of servitude.

Negro Race Projected Forward Beyond Natural Development.

When a subject people in the hard school of experience gradually assert themselves and evolve from within the physical, mental and spiritual forces that achieve their freedom, as did the Anglo-Saxons from under the yoke of their Norman conquerors, they come forth by natural growth prepared for the duties and responsibilities of self-government.

But the negro as a race had undergone no such process of evolution. His transportation from Africa to America and his transition from slavery to freedom were both the results of external impositions and not of internal development. The power came from without, not from within. He did not win his freedom. It was bestowed upon him.

Granting that he is only a backward member of the great human family, which as most evolutionists and Christians believe, is moving steadily on toward the distant goal of Millennial perfection, yet we cannot fail to see that the negro race was suddenly projected forward into a stage of civilization many generations in advance of its own natural development.

Is it any wonder, then, that the negro as a race

should not be altogether fitted to the laws and customs and political institutions of those among whom his lot was cast?

Again, is it any wonder that this advanced civilization should find it necessary at times to apply sterner penalties for the curbing of his savage instincts when he was freed from the accustomed control of his master?

Unfortunately, soon after emancipation, some of the worst specimens of the blacks began to commit an unpardonable crime. Instantly the white man placed over the door of his home, whether it were proud mansion or humble cabin, a warning more terrible in its meaning than that which Dante dreamed he saw over the gateway to hell: "Let the brute who enters here leave all hope behind." In the presence of that crime, men do not think, they only feel.

But how shall we fix bounds for those who rush madly outside the limits of the law? Lynching began with this and similar savage crimes. But, alas, where will they all end? Let us hope that these excesses of both races are merely incidental factors in our problem, and that they will soon diminish and eventually disappear.

Abhorrent as are the crimes of some degenerate members of the negro race, we Southern people can never forget the simple faith and tragic loyalty of those thousands of slaves who guarded and protected the women and children at home, while the men were at the front fighting to drive back an invading foe

whose victory meant freedom to those slaves themselves.

NEGRO MILITARY SALUTE CONFEDERATE MONUMENT.

Nor is there a total dearth of touching incidents in these latter days. Only about a year or so ago, a negro military company from Savannah came marching in full array up Broadway in Augusta. In front of them, rising toward the sky in beautiful, artistic proportions, stood a marble monument erected by loving women to the dead Confederacy. At its base were statutes of Lee and Jackson and Cobb and Walker, and lifted high up above them all on the top of the towering shaft stood the statue of a private Confederate soldier. No white military company, no camp of maimed Confederate veterans ever pass that monument without giving it the honor of a formal salute.

As the negro military comes nearer, one of two gentlemen standing in the doorway of a building nearby says: "Let us watch now and see if those fellows will salute the Confederate monument." The other gentleman explains that no salute will be given because it will not occur to the commanding officer, but that the omission will not be intended as an affront. Scarcely are the words spoken, when the negro captain, in clear, ringing tones that prove the sincerity of his tribute, gives the command to salute, and every black arm instantly obeys that command.

There was cheering among the white bystanders. When the great Wade Hampton lay upon his

death bed he made this prayer: "God bless all my people—white and black—God bless them all."

Suffrage Qualifications.

While the issue of political control under the fifteenth amendment still confronted the Southern States, Mississippi, having the greatest negro majority, led off with her Constitution of 1891 providing an educational qualification for voting. There being more illiterate blacks than illiterate whites in Mississippi, the necessary effect of this law was to promote white supremacy. But the law on its face did not discriminate against the negro on account of his race. It covered whites and blacks alike.

The Supreme Court of the United States promptly decided that this Mississippi law did not violate the Federal Constitution. What the effect of its practical administration has been need not now be discussed.

Other States followed with similar laws, based primarily on educational qualifications, but soon a proviso was evolved to preserve the ballot to illiterate whites. An honest administration of a suffrage law based on an educational qualification would necessarily disfranchise a great many whites. Hence a proviso was devised to the effect that the educational qualification should not apply to any person, nor to the descendant of any person, who could have voted at some past date, say, for example, January 1, 1867, when negroes as a class were not allowed to vote.

This proviso was popularly known as the "Grandfather clause," because under it, a man otherwise disqualified, might, so to speak, inherit the right of suffrage from his grandfather.

The manifest purpose of this clause was to nullify the educational requirement of the State law as to the whites, while leaving it in full force as to the negroes, and in this way to get around the fifteenth amendment of the Federal Constitution, which forbids discrimination on account of race.

The Supreme Court of the United States has gone as far as any one could have expected it to go in upholding the reserved rights of the States on the subject of suffrage. But that court has never directly nor indirectly sanctioned the validity of any suffrage law containing the Grandfather clause or any other clause based on the same principle.

Whenever the Supreme Court shall take judicial notice, as it will do, of the historical fact that on the date selected for the Grandfather clause to begin to operate, say January 1, 1867, the negroes as a class had no right to vote, or when that undeniable or easily proven fact is made to appear by evidence, this device of the Grandfather clause must fall of its own crookedness. A preference to one race is necessarily the legal equivalent of a discrimination against the other race.

It will mark a new departure in American constitutional law when the right to vote is made inheritable from the non-transmissible attributes of an

ancestor instead of being based on the personal attributes of the voter.

It will mark a still further departure in judicial construction when the Supreme Court finds in this new doctrine a legal justification for sanctioning the race discrimination forbidden by the fifteenth amendment.*

The Mississippi law, the only one ever squarely considered and directly construed by the Supreme Court, 170 U. S. 213, does not contain the Grandfather clause. That was a device of later invention.

The case of Giles *v.* Harris, 189 U. S. 475, involving the Alabama law, was dismissed in the Supreme Court for want of jurisdiction in the lower court—but Justices Brewer, Brown and Harlan dissented in vigorous terms.

The latest case, of Jones *v.* Montague, 194 U. S.

* This prediction proved true. See 238 U. S. page 347: Guinn v. United States.

(From The Augusta Chronicle, July 20, 1915.)

U. S. SUPREME COURT DECISION COMPLETE VINDICATION FOR EX-CONGRESSMAN FLEMING

By Unanimous Opinion, Written by Chief Justice White, Himself a Democrat and Confederate Soldier, the "Grandfather" Clause Declared Unconstitutional — What Mr. Fleming Said in His Famous Athens Speech Nine Years Ago.

At the commencement of the University of Georgia in 1906, former Congressman Wm. H. Fleming, as the alumni orator, delivered an address on the race problem in the South.

One of the points on which he antagonized the popular political sentiment of that day, was the so-called "Grandfather clause," under which Georgia and other States were attempting to disfranchise the negro.

Mr. Fleming took the position that the Supreme Court of the United States would declare that clause unconstitutional, while many other public men in Georgia seemed disposed to criticise Mr. Fleming, and assured the people that the proposed law would stand every test.

147, involving the Virginia law, was dismissed because the act sought to be enjoined—the issuing of certificates of election, etc., to members of Congress—had already been done, and the congressmen had taken their seats before the case was reached in the Supreme Court.

Indeed, it is no secret that those lawyers who undertake to defend these disfranchisement enactments, place their chief reliance in the technical difficulties of getting the merits of the question before the Supreme Court. It goes without saying, however, that lawyers can be found to surmount those technical difficulties, and at the bar of the Supreme Court confront the "Grandfather" clause of the State Constitutions with the "anti-race-discrimination" clause of the Federal Constitution.

The result scarcely admits of a doubt.

How completely Mr. Fleming's legal position has been vindicated after nine years of waiting, is shown by the following extracts from his Athens address and from the recent unanimous decisions of the Supreme Court of the United States delivered by Chief Justice White, himself a Southern man and a Confederate soldier.

From Mr. Fleming's address, June 19, 1906:

"Whenever the Supreme Court shall take judicial notice, as it will do, of the historical fact that on the date selected for the 'Grandfather' clause to begin to operate, say January 1, 1867, the negroes as a class had no right to vote, or when that undeniable or easily proven fact is made to appear by evidence, this device of the 'Grandfather' clause must fall of its own crookedness. A preference to one race is necessarily the legal equivalent of a discrimination against the other race.

"It will be a new departure in American constitutional law when the right to vote is made inheritable from the non-transmissible attributes of an ancestor, instead of being based on the personal attributes of the voter.

"It will mark a still further departure in judicial construction when the Supreme Court finds in the new doctrine a legal justification for sanctioning the race discrimination forbidden by the fifteenth amendment. * * * *

"How long do the advocates of this method of disfranchise-

Disfranchisement Movement in Georgia.

What, then, shall we, as Georgians and Americans, true to our own great State, and true to the greater nation of which it is a part, say of the movement which is now being so freely discussed, and which has seemingly gained some headway, to so amend our State Constitution as to disfranchise the negroes as a race?

We have read in the public press repeated statements that prominent leaders are openly announcing their intention to "disfranchise the negro," and promising to "eliminate him from politics." Not only so, but they further promise to accomplish that end through a so-called educational qualification or understanding clause, and at the same time not to deprive a single white man of his ballot, no matter how illiterate or ignorant he may be.

I might hesitate here and now, even at the last

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ment think they can expose their purpose to the political eye, and keep it concealed from the judicial eye? How long can they proclaim it on the hustings, and hush it in the courthouse?"

"Nor can escape be found in that line of decisions by the Supreme Court to the effect that the prohibition of the fifteenth amendment applies to State action and not to acts of private citizens (quoting 100 U. S., 339).

"This same principle of responsibility will be applied to the registrars under this disfranchisement law. Their acts will be the acts of the State, and will consequently come within the prohibition of the fifteenth amendment, and will also be within the jurisdiction of the Federal courts, where alleged violations of the law will be tried."

From Supreme Court decisions, June 21, 1915 (238 U. S. p. 347 and p. 368):

"It is true, it (the Oklahoma 'Grandfather' clause) contains no express words of an exclusion from the standard which it establishes of any person on account of race, color, or previous condition of servitude prohibited by the fifteenth amendment, but the standard itself inherently brings that result into existence since it is based purely upon a period of time before the enactment of the

moment, to proceed further with the discussion of this branch of my subject if the facts as to intentions and methods, as I have just stated them, were at all in dispute. But as I understand it, there is no disposition to deny them—rather, an increasing boldness in asserting them. Therefore we may quite properly, it seems to me, proceed to draw some necessary deductions from those admitted facts as they bear on the law and morals of the situation.

How, then, are these two purposes, to put out all the negroes and put in all the whites, to be accomplished in the face of the prohibition of the fifteenth amendment? Clearly, it can not be done by open avowal in the body of the law, because in that event, the law would convict itself in any court in the land. How, then, is this avowed purpose to be accomplished? Pardon me, my friends, but let us face the truth; the scheme must be to disfranchise the negro by a fraudulent administration of the law. In no other

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fifteenth amendment and makes that period the controlling and dominant test of the right of suffrage.

"In other words we seek in vain for any ground which would sustain any other interpretation but that the provision, recurring to the conditions existing before the fifteenth amendment was adopted, and continuance of which the fifteenth amendment prohibited, proposed, by in substance and effect lifting those conditions over to a period of time after the amendment to make them the basis of right to suffrage conferred in direct and positive disregard of the fifteenth amendment.

"And the same result, we are of opinion, is demonstrated by considering whether it is possible to discover any basis of reason for the standard thus fixed other than the purpose above stated."

"The three parties (referring to the plaintiffs in the Maryland cases) thereupon began these separate suits to recover damages against the two registering officers who had refused to register them on the ground that they had been deprived of a right to vote secured by the fifteenth amendment, and that there was liability for damages under section 1979, Rev. Stat. * * * *

"The cases were then tried by the court without a jury and

way is it possible to produce the promised results. Legislative ingenuity must be backed up by administrative fraud—else the avowed purpose cannot be accomplished.

It must be admitted that the machinery of the proposed law could be easily perverted to fraudulent purposes. Before a citizen can register to vote, he is to be required to read and explain, or to be able to understand, any paragraph of the State Constitution. Now, we lawyers all know that there are some parts of our Constitution that the Supreme Court judges themselves have never been able fully to explain—even granting that they understand them all. But who are to judge of this explanation or understanding? The registrars, of course. Suppose the most learned explanation could be given, who will vouch that the registrars themselves will understand it, or will accept it as satisfactory?

Of course, the officers of registration are to be white. An easy paragraph for a white applicant; a difficult paragraph for a negro applicant; the acceptance of any sort of an explanation from a white applicant: the rejection of any sort of an explanation

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to the judgments in favor of the plaintiffs which resulted, these three separate writs of error prosecuted. * * * *

"Affirmed."

Mr. Fleming's contention was that Georgia could and would maintain her white supremacy, without depriving the negro of his rights under the Federal Constitution, and without requiring election or registration officers to perjure themselves in the administration of the State law.

If that can be done (and who will seriously deny it?) then these recent decisions of the Supreme Court ought to give new hope and courage to all citizens who believe in law and order based on justice and morality.

from a negro applicant—there you have the hidden cards with which the game of cheat is to be played. And it is on this miserable, bare-faced scheme of fraud that our proud and noble people are asked to rest their safety and their civilization.

How long do the advocates of this method of disfranchisement think they can expose their purpose to the political eye and keep it concealed from the judicial eye? How long can they proclaim it on the hustings and hush it in the court house?

Referring to one of these laws, a learned commentator on our Supreme Court decisions has said: "If in the light of their history and conditions and the avowed purpose of the authors of the laws, their objects are clothed in statutes so worded that the real designs are not expressed in terms, the situation would seem to be one to require the court to reason from cause to effect."

The court, in construing the fourteenth amendment (118 U. S. 356), had said: "Though the law itself be fair on its face and impartial in appearance, yet if it be applied and administered by public authority with AN EVIL EYE AND AN UNEQUAL HAND so as practically to make unjust and unequal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

Nor can escape be found in that line of decisions by the Supreme Court to the effect that the prohibition of the fifteenth amendment applies to State

action and not to acts of private citizens. The registrars who are to enforce this disfranchisement law are officers and agents of the State. The Supreme Court (100 U. S. 339) has further said: "Whoever by virtue of his public position under a State government, deprives another of life, liberty or property without due process of law, or denies or takes away the equal protection of the law, violates the inhibition of the fourteenth amendment, and as he acts in the name of, and for, the State and is clothed with her power, HIS ACT IS HER ACT."

This same principle of responsibility will be applied to the registrars under this disfranchisement law. Their acts will be the acts of the State, and will consequently come within the prohibition of the fifteenth amendment, and will also be within the jurisdiction of the Federal courts, where alleged violations of the law will be tried.*

But aside from these legal aspects of the matter, let us ask ourselves if there is not a more serious practical difficulty to be overcome. These registrars, as officers, must take the usual oath to perform their duties impartially under the law. Let us put the plain, blunt question: How many counties in Georgia can be relied on to furnish three citizens for registrars who will agree in advance to violate their solemn oaths? Will not honest men point at them the finger of scorn?

* This prediction proved true. See 238 U. S. page 368: Myers v. Anderson.

The great John C. Calhoun sought to nullify a Federal statute law on the tariff by State action because he believed it to be in violation of the Federal Constitution, which he loved and honored.

But these latter-day nullifiers are seeking to nullify the Federal Constitution by a State law—no, not by a State law itself, but by the fraudulent administration of a State law. No power on earth could have made Mr. Calhoun stoop to such chicanery—he was fashioned in a nobler mould. What a contrast between the great nullifier and these little nullifiers!

The abuses to which the broad discretionary powers of the registrars under these disfranchisement laws might be carried in times of fierce partisan politics are absolutely unlimited. We need not flatter ourselves that white men will never be the victims of such abuses. When moral character is once defiled and fraud seeks its own selfish ends, it will not stop at the color line.

One Danger in Educational Qualification.

There can be no legal objection, whenever the public necessity requires it, to establishing a reasonable educational qualification for voters, provided that qualification is fairly and honestly applied. But if this educational qualification is to be used as a fraudulent subterfuge to disfranchise the negro, then there is another very serious consequence which will necessarily follow.

If by appeals to race prejudice and fear these

negro disfranchisers establish the educational test in fulfilment of their promise to "eliminate the negro from politics," then of necessity, these same leaders and their followers must recognize that from their point of view it is not the IGNORANT, but the EDUCATED negroes who will be the most dangerous political enemies of the whites.

The question will at once arise, why should the white people create dangerous political enemies by allowing the negroes to be educated? Why not "eliminate them from politics" by keeping them in ignorance? There is no escape from the logic of this argument if the premise be correct. Thus we would find ourselves committed to the degrading policy of enforcing ignorance on a weaker race, with its attendant results of peonage and semi-slavery, from which all good men would pray for deliverance.

DIVISION OF SCHOOL FUNDS ON RACE LINES.

Even now there are signs of a movement in Georgia to give the negro schools only that pittance of money arising from the negro's taxes. A law to that effect has already been declared invalid by the State court in North Carolina (94 N. C. 709); also by the State court in Kentucky (83 Ky. 49); and also by the Federal court in three decisions from Kentucky (16 Fed. R. p. 297; 23 Fed. R. 634, and 72 Fed. R. 689.)

In our own State a bill to the same effect was passed in 1888 for a local school system, and Governor

John B. Gordon, while Hon. Clifford Anderson was attorney general, vetoed it on the ground that it was against sound policy and a violation of the Constitution of the State and the United States.

There is nothing in the decision of our State Supreme Court in the Eatonton case (80 Ga. 755) nor in the Richmond County High School case (103 Ga. 641) to sustain the proposition that the common school funds of the State, or of any subdivision of the State, can be divided between the races in proportion to the property or taxes of each. On the contrary, in the latter case, our State court said: "So far as the record discloses, both races have the same facilities of attending them" (the free common schools). And the United States Supreme Court, in reviewing this Georgia case (175 U. S. 528), say it is an admitted principle of law that the "benefits and burdens of public taxation must be shared by citizens without discrimination against any class on account of their race."

Along this same line spoke Governor Charles J. Jenkins, known to Georgians as the "Noblest Roman of Them All," when he took the chair as president of the Constitutional convention of 1877. He said:

"I utter no caution against class legislation or discrimination against our citizens of African descent. I feel a perfect assurance that there is no member of this body who would propose such action, and if there were, he would soon find himself without a following."

These are the words of a high-minded statesman—not of a time-serving politician. There are many differences between these two types of public men. One difference is that a politician seeks to find out what public opinion is and hastens to follow it, while a statesman seeks to find out what public opinion ought to be and helps to mould it.

Our late Chancellor Hill, whose untimely death is so deeply deplored by us all, belonged to that higher class of moulders of public opinion. By example, as well as by precept, he led the way to the nobler ends of life.

Should Georgia Follow Other States?

Surely nothing but the direst necessity of self-preservation could induce any people to resort to such suffrage expedients as are now being proposed to the people of Georgia. Nothing less than an impending overthrow of white civilization by negro domination could excuse such extreme measures. But if our discussion has shown anything, it has shown that Georgia is not now in danger of negro domination.

One argument that is being pressed upon our people is that Georgia should follow the example of other Southern States that have passed similar disfranchisement laws. But let us ask, why should Georgia follow them? Is there anything in their examples on this subject worthy of our imitation? If their necessities compelled such questionable action, let us sympathize with them in their extremity.

But let us not imitate them when no such necessity besets us. Did not Georgia first redeem herself after reconstruction? Has she not kept abreast of her sister States in material, intellectual and moral progress? Is she not still the Empire State of the South? What State can show a cleaner official record for thirty years? Rather let Georgia continue to lead in wise and conservative statesmanship. On all fundamental questions our white people are sufficiently united in thought and purpose to come together in a solid phalanx if the negroes should ever return to the ballot box in sufficient numbers on one side of an issue to jeopardize the public safety.

As a legal means of maintaining white supremacy, no plan yet devised approaches in effectiveness our party primary system, in combination with the cumulative poll tax provision of the Constitution.

Whatever may be the final political status of the negro, we are now undeniably in a transition stage of evolution. It is scarcely conceivable that the conditions created by the disfranchisement laws of some Southern States can be permanent. The battle for supremacy between those laws and the Federal Constitution remains to be fought out. If the Federal Constitution proves victorious, as it is very apt to do, then the entire electoral system of these States may have to be changed.

On the other hand, Georgia, through her superior statesmanship, has put herself in a position of safety, ready to take advantage of whatever hopeful devel-

opments the future may unfold. She has violated no Federal law. She has maintained white supremacy with the least possible friction, and can continue to so maintain it.

Not only is this campaign against the negro unnecessary and unjust, but it is most inopportune at this juncture. When every County in the State is calling loudly for more labor to serve the household and till the fields and develop our resources, why should we seek to enact more oppressive laws against the labor we now have?

We do not know what shifting phases this vexing race problem may assume, but we may rest in the conviction that its ultimate solution must be reached by proceeding along the lines of honesty and justice. Let us not in cowardice or in want of faith, needlessly sacrifice our higher ideals of private and public life. Race differences may necessitate social distinctions. But race differences can not repeal the moral law.

The Moral Law—Its Origin and Sanction.

What is this thing we call the moral law? Is it a mere weak sentiment, suitable only for children and preachers and Sunday school teachers? Or is it the fiat of Nature and Nature's God, commanding obedience from all men under the sanction of inevitable penalties? We will waive all questions as to weight of authority, and reason out the matter for ourselves.

Whence come our morals or ethical conceptions? Briefly let us summarize:

First: The theological school rests the foundation of morals on divine commandment or revelation, which quickens the conscience.

God spake through Moses, the Prophets and the Christ.

Second: The psychological school traces the source of morals to an instinct or sense that is innate in the mind itself—the conscience.

The philosopher and metaphysician, Immanuel Kant, reasoned back to his celebrated postulate of a "categorical imperative" call to duty.

Third: The utilitarian school evolves morals from human experience, sanctioning as "good" or "right" that conduct which has proven beneficial, and condemning as "bad" or "wrong" that conduct which has proven injurious, thus creating and developing the conscience by successive stages of experimental knowledge.

Herbert Spencer thus evolved his system of utilitarian ethics till it almost flowered out in the beauty of the "Golden Rule."

Professor Huxley, discussing the scientific doctrine of causation, says: "The safety of morality lies in a real and living belief in that fixed order of nature which sends social disorganization upon the track of immorality as surely as it sends physical disease after physical trespassers."

It is not necessary for us to determine how much of truth there is in each of these schools of thought. Enough for us to know that all three reach substan-

tially the same conclusion as to right rules of conduct for men. By different routes they arrive at the same goal. In reasoning they are three; in acting they are one. Here is a subject on which religion and science are in full accord, namely, that the moral law is the wisest rule of human conduct.

So much for the individual man.

The Moral Law Applies to States as Well as to Individuals.

Now, does the same moral law apply to States and Nations as well as to individuals? Or are there two codes of morality, one for individuals and another for aggregations of individuals? Can we practice fraud as a collective body of citizens and still preserve our personal integrity as individual citizens?

We might quote Mr. Jefferson as an authority for the doctrine that "moral duties are as obligatory on nations as on individuals." But again let us waive authority and reason out our own conclusions. We will test the question by the standards of the three schools of thought first named.

If we assume that the theological school is correct, it is manifest that there can not be a code of public morals different in principle from the code of private morals. God must deal with individuals and nations alike, because the former are the responsible units of the latter.

If we assume that the psychological school is correct, it is equally manifest that the conscience, being

an innate mental quality, cannot reverse its action by changing from private to public capacity, from individual to collective functions.

If we assume that the utilitarian school is correct, it ought to be equally as clear that the rule of conduct which experience has proven to be beneficial as between individuals, is also beneficial as between States under like conditions.

It is true that aggregations of individuals, by reason of divided responsibility, do not usually act up to the code of morals recognized by single individuals. That historical fact shows the imperfection of our past civilization, and calls upon us for better work in the future. No one accepts the condition as permanent or satisfactory. The great task of civilization, the dearest hope of philosophers and noble-minded statesmen, is to constantly improve that condition and bring nations more under the sway of the moral law. Though perfection be unattainable, every step is progress.

In proportion as international intercourse becomes more free will a code of international ethics, based on a code of personal ethics, be developed, to the immeasurable advantage of all concerned. Such is the doctrine underlying The Hague tribunal, which has already done so much for the peace of the world.

One of the noblest tributes ever paid to Gladstone was that he had applied the moral law to British politics.

It was Aristides, surnamed the Just—a brave

soldier, a successful general, a man of sound practical judgment, not a mere dreamer—who, when named by the Athenians to consider a secret plan, suggested by Themistodes, to gain naval supremacy for Athens by burning the ships of her allies, reported against the unscrupulous scheme and said: "What Themistodes proposes might be to your present advantage, but O Athenians, it is not just."

Speaking of the ideal, universal, moral code, one of the least sentimental of modern scientific writers says: "Although its realization may lie in the unseen future, civilization must hold fast to it, if it would be any more than a blind natural process; and it is certainly the noblest function of social science to point out the wearisome way along which mankind, dripping with blood, yet pants for the distant goal."

Another deep thinker, summing up the facts of history and the reasonings of philosophers, says: "That the moral law is the unchanging law of social progress in human society is the lesson which appears to be written over all things."

Solution of Race Problem: Give Negro Justice.

The foundation of the moral law is justice. Let us solve the negro problem by giving the negro justice and applying to him the recognized principles of the moral law.

This does not require social equality. It does not require that we should surrender into his inexperienced and incompetent hands the reins of politi-

cal government. But it does require that we recognize his fundamental rights as a man, and that we judge each individual according to his own qualifications, and not according to the lower average characteristics of his race. Political rights can not justly be withheld from those American citizens of an inferior or backward race who raise themselves up to the standard of citizenship which the superior race applies to its own members.

It is true that the right of suffrage is not one of those inalienable rights of man, like life, liberty and the pursuit of happiness, as enumerated in the Declaration of Independence, but the right of exemption from discrimination in the exercise of suffrage on account of race, is one of the guaranteed constitutional rights of all American citizens.

We of the South are an integral part of this great country. We should stand ready to make every sacrifice demanded by honor and permitted by wisdom to remove the last vestige of an excuse for the perpetuation of that spirit of sectionalism which excludes us from the full participation in governmental honors to which our brain and character entitle us.

Let us respect the National laws to the limit of endurance, and if that limit should be passed, let us resort to some means of redress more typical of Southern manhood than fraudulent subterfuge. The future material prosperity of the South is already assured. Let us resolve that there shall remain in-

grained in the moral fibre of our New South the high character of our Old South—which can best be described in the memorable words of Edmund Burke as "that sensibility of principle, that chastity of honor which felt a stain like a wound."

We cannot afford to sacrifice our ideas of justice, of law and of religion for the purpose of preventing the negro from elevating himself. If we wish to preserve the wide gap between our race and his in the onward progress of civilization, let us do it by lifting ourselves up, not by holding him down.

If, as some predict, the negro in the distant future must fail and fall by the wayside in the strenuous march of the nations, let him fall by his own inferiority, and not by our tyranny. Give him a fair chance to work out what is in him.

Carl McKinley, that brilliant and noble-hearted author of "An Appeal to Pharaoh," who advocated so earnestly and so eloquently the impracticable policy of deportation, declared himself on this subject as follows:

"We should have learned by this time moreover, that we cannot treat the negro with injustice, however disguised, without sharing the consequences with him. * * * It would be a foul wrong to beat him back in his upward struggle, and consign him to a lower plane and establish him on it."

If the negro as a race is to be disfranchised regardless of the personal qualifications of meritorious individual members of that race, consider for a mo-

ment some of the changes we must make in many of the fundamental doctrines lying at the base of our government. The revised version of our political Bible would have to read something like this: "No taxation without representation—except as to negroes;" "equal rights to all—except as to negroes;" "all men are created equal—except as to negroes."

No Recantation of Jefferson's Doctrine.

Some modern critics seriously suggest that we should amend that paragraph of the Declaration of Independence which asserts the equal rights of men, so as to adjust it more accurately to historical and scientific facts. But that epoch-making document needs no alteration upon the subject of human rights when interpreted as it was intended to be interpreted by the man who drafted it. Mark you, Mr. Jefferson did not write "All men are born free," as the quotation is sometimes given. That looser language is found in the Constitution of Massachusetts, not in the Declaration of Independence. Such an assertion would have been disproved by the historical fact of slavery then existing. What Mr. Jefferson wrote was: "All men are created equal." That is to say, not equal in exterior circumstances, nor in physical or mental attributes, but equal in the sight of God and just human law, in their inalienable rights to life, liberty and the pursuit of happiness. Americans want no recantation of that declaration. It is the political corollary of the Christian doctrine of the

justice and the Fatherhood of God. Let it stand as it was penned by Jefferson, an ennobling, even though unattainable, ideal, demanded by the spiritual nature of man—one of those ideals that have done more to lift up humanity and to build up civilization than all the gold from all the mines of all the world.

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